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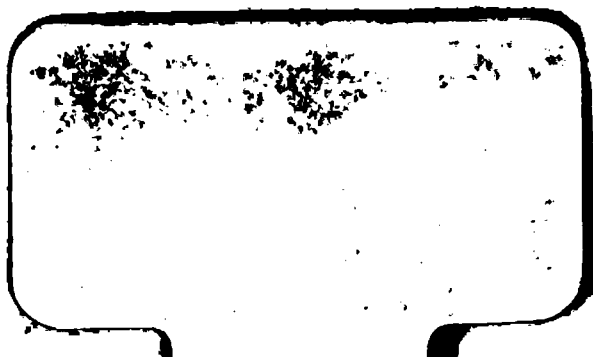


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THE *S.A. 1827*  
**LAW AND PRACTICE**

IN  
**Bankruptcy,**

AS  
**FOUNDED ON THE RECENT STATUTE;**

WITH  
**FORMS.**

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**BY JOHN FREDERICK ARCHBOLD, Esq.**  
**OF LINCOLN'S INN, BARRISTER AT LAW.**

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**Second Edition,**  
**WITH CONSIDERABLE ADDITIONS.**  
**BY**  
**AN EQUITY BARRISTER.**

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# ADVERTISEMENT

TO THE

SECOND EDITION.

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THE Publishers have availed themselves of the opportunity afforded them by a demand for a Second Edition of the following Work, to have it revised throughout and brought down to the present period. For this purpose they have been enabled to procure the services of a Gentleman of considerable experience at the Chancery Bar, whom they judged well qualified to make such alterations as recent decisions rendered necessary.

In the preparing this Edition for the press, great care has been taken to preserve the body of Mr. Archbold's work entire, and therefore no further alterations have been attempted, than was necessary to make it consistent with the present state of the Law and Practice in Bankruptcy. Some errors which had inadvertently crept into the former edition have been corrected, and in the first part of the work all the recent decisions on the subject, both at law and in equity,

have been incorporated; thereby bringing the law in ordinary cases of bankruptcy down to the present period of publication.

To the second part of the work, great, and it is hoped, very important additions have been made, by introducing many points of practice not hitherto noticed, and many forms and precedents in general use, but heretofore omitted; such, for instance, as will be found on the subject of Renewed Commissions; the Expunging Proof of Debts by the Commissioners; superseding a Commission on consent of Creditors accepting a Composition under the new Statute; Precedents of the Solicitors' and Messengers' Bills of Costs, &c. &c. It is hoped that the additions made to the work have not in any instance interfered with its general character. The publishers, therefore, presuming upon the estimation in which this work is held, as evinced by the rapid sale of the first edition, submit the present with some confidence to the approbation of the profession. The most material of the new Forms and Precedents in the second book, are distinguished in the general Table of Contents by being printed in *Italics*.

## PREFACE.



**T**HE greater part of the manuscript of this little work was compiled by me many years since, not with a view to publication, but merely for my private use. Indeed, at that time, the profession were so abundantly supplied with works upon the Bankrupt Law, so many gentlemen had written, and so ably, upon the subject, that so far from having any inducement to publish what I had thus compiled, I had many motives to dissuade me from doing so.

The works hitherto extant upon this subject, however, have now become nearly obsolete; the recent act of parliament has made so many, and in many cases such minute, alterations in the Bankrupt Law, that the old established works upon the subject are no longer guides that can at all be depended upon, they can no longer be safely used as books of reference, except by persons thoroughly conversant with the subject, and well aware of the instances in which it has been affected by the recent statute. Nor have the writers of these works intimated any intention of altering them, so as to adapt them to the present state of the law; if they had, so fully do I appreciate the value of their writings, that I think I should be the last person who would feel an inclination to compete with them.

Under these circumstances, therefore, I have placed my manuscript in the hands of my publishers,—altered very materially, of course, from what it was originally, and in many parts altogether rewritten. Adapting what I had formerly written, to the recent act of parliament; and engrafting the one thus, upon the other, was a work of great delicacy, and, under the peculiar circumstances of the case, required much consideration and caution: but I have taken infinite pains with the work in this respect, and I think it will be found correct; I think the reader will find it to comprise



the whole of the law relating to bankrupts, as that law stands at present.

The manner in which the work is arranged, is very simple. It is divided into two books: the one containing the law, the other the practice and forms, in cases of bankruptcy. The first Book contains three Chapters: the first, treating of the Law in ordinary cases of bankruptcy, arranged in Sections, in the order in which the subject of each usually occurs in practice; the second, treating of Joint and Separate Commissions; and the third, treating of the Bankruptcy of Members of Parliament. The second Book contains, 1st, the practice, and the forms necessary, upon striking the docket and issuing the commission; 2dly, the practice, and the forms necessary, at the private meeting; 3dly, the practice, and the forms necessary, at the first public meeting; 4thly, the practice, and the forms necessary, at the second public meeting; 5thly, the practice, and the forms necessary, at the third public meeting; 6thly, the practice, and the forms necessary, at other meetings: such as, meetings, to consent to the assignees commencing suits, &c.; for the sale of the bankrupt's lands, &c.; for declaring a first, further or final dividend; Forms in the case of *supersedeas*; Forms of petitions, affidavits, orders, &c.; Forms under joint commissions; and Forms under commissions against Members of Parliament.

As to the manner in which all this has been done, I shall, of course, say nothing. I do trust, however, that the unassuming form in which this little work is offered to the public, the plain and unaffected style in which it is written, will acquire for it some portion of that favour which has been unsparingly bestowed upon my other professional works. In each of my former works, I attempted to simplify my subject, to render a knowledge of it easy of attainment, and, by a simple and familiar arrangement of the matter, to make the work desirable as a book of reference; and I succeeded. I have endeavoured to do the same in the present work; whether successfully or not, is for the Profession to determine.

J. F. A.

6, *Symond's Inn.*

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<i>B. &amp; A.</i>	<b>Barnewall and Alderson's Reports.</b>
<i>B. &amp; B.</i>	<b>Broderip and Bingham's Reports.</b>
<i>Ball &amp; Beatty</i>	<b>Ball and Beatty's Reports.</b>
<i>B. &amp; C.</i>	<b>Barnewall and Cresswell's Reports.</b>
<i>B. &amp; P.</i>	<b>Bosanquet and Puller's Reports.</b>
<i>Bro.</i>	<b>Browne's Reports.</b>
<i>Camp.</i>	<b>Campbell's Reports.</b>
<i>Carr. &amp; P.</i>	<b>Carrington and Payne's Reports.</b>
<i>Cook.</i>	<b>Cooke's Bankrupt Law, 8th Ed.</b>
<i>Coop.</i>	<b>George Cooper's Reports.</b>
<i>Cowp.</i>	<b>Cowper's Reports, B. R.</b>
<i>D. &amp; R.</i>	<b>Dowling and Ryland's Reports.</b>
<i>Doug.</i>	<b>Douglas's Reports.</b>
<i>Esp.</i>	<b>Espinasse's Reports.</b>
<i>Glyn &amp; J.</i>	<b>Glyn and Jameson's Reports.</b>
<i>H. Bl.</i>	<b>Henry Blackstone's Reports.</b>
<i>Jac.</i>	<b>Jacob's Reports.</b>
<i>Jac. &amp; W.</i>	<b>Jacob and Walker's Reports.</b>
<i>Mad.</i>	<b>Maddock's Reports.</b>
<i>Moore.</i>	<b>John B. Moore's Reports in C. B.</b>
<i>New R.</i>	<b>Bosanquet and Puller's New Reports.</b>
<i>Ord. Loughb. &amp;c.</i>	<b>Orders in Bankruptcy.</b>
<i>P. W.</i>	<b>Peere Williams's Reports.</b>
<i>R. &amp; M.</i>	<b>Ryan and Moody's Reports.</b>
<i>S. &amp; S.</i>	<b>Simons and Stuart's Reports.</b>
<i>Sch. &amp; L.</i>	<b>Schoales and Lefroy's Reports.</b>
<i>Str.</i>	<b>Strange's Reports.</b>
<i>T. R.</i>	<b>Term Reports.</b>
<i>Taunt.</i>	<b>Taunton's Reports.</b>
<i>V. &amp; B.</i>	<b>Vesey and Beames' Reports.</b>
<i>Ves.</i>	<b>Vesey Junior's Reports.</b>
<i>Vez. or Ves. sen.</i>	<b>Vezey Senior's Reports.</b>
<i>W. Bl.</i>	<b>Sir William Blackstone's Reports.</b>

\* \* The other references used in the course of this work, are such as are usually adopted.



## *Errata et Addenda.*

### **Book I.**

*Page* 71, line 16, from top, for " 21," read " 23."

111, line 16, from top, for "*creditor has*," read "*creditor who has*."

186, line 7, from top, for " § 39," read " § 36."

206, line 7, from top, for " 181," read " 201."

207, line 20, from bottom, for "*petition*," read "*certificate*."

210, line 9, from top, for " § 120," read " § 126."

216, line 24, } from bottom, for { "*sec ii. 12*," read "*see*  
—, line 9, } { *ii. p. 170*.

7, line 13, from the top, after "*Ord. Eld. 15 Aug. 1821*," add " and by *Ord. Eld. 3 Feb. 1802*, no *London commissioner's name* can be inserted in a country commission, without a certificate that it is with his consent."

### **Book II.**

*Page* 68, bottom line, for " *sec 11*," read " *p. 170. post.*"



ANNO SEXTO GEORGII IV. REGIS.

CAP. XVI.

*An Act to amend the Laws relating to Bankrupts.*

[2d. May, 1825.]

**WHEREAS** it is expedient to amend the laws relating to bankrupts, and to simplify the language thereof, and to consolidate the same, so amended and simplified, in one act, and to make other provisions respecting bankrupts; be it therefore enacted by the king's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That an act passed in the thirty-fourth and thirty-fifth years of the reign of king *Henry* the eighth, intituled *an act against such persons as do make bankrupt*; and also an act passed in the thirteenth year of the reign of queen *Elizabeth*, intituled *an act touching orders for bankrupts*; and also an act passed in the first year of the reign of king *James* the first, intituled *an act for the better relief of the creditors against such as shall become bankrupts*, and also an act passed in the twenty-first year of the reign of king *James*, the first, intituled *for the further description of a bankrupt, and relief of creditors, against such as shall become bankrupts, and for inflicting corporal punishments upon the bankrupts in some special cases*; and also an act passed in the thirteenth and fourteenth years of the reign of king *Charles* the second, intituled *an act declaratory concerning bankrupts*; and also an act passed in the tenth year of the reign of queen *Anne*, intituled *an act for repealing a clause in the above-mentioned statute passed in the twenty-first year of the reign of king James the first, and for the explanation of the laws relating to bankruptcy in cases of partnership*; and also an act made in the seventh year of the reign of king *George* the first, intituled *an act for explaining and making more effectual the several acts concerning bankrupts*; and also an act passed in the fifth year of the reign of king *George* the second, intituled *an act to prevent the committing of frauds by bankrupts*; and also an act passed in the nineteenth year of the reign of king *George* the second, intituled *an act for amending the laws relating to bankrupts*; and also so much of an act passed in the twenty-fourth year of the reign of king *George* the second, the title of which begins with the words, *an act to continue several laws therein mentioned for*

Former enactments respecting bankrupts repealed:  
34 & 35 H. S. c. 4.  
13 Eliz., c. 7.  
1 Jac. 1, c. 15.  
21 Jac. 1, c. 19.  
13 & 14 Car. 2. c. 24.  
10 Ann, c. 15.  
7 G. 1, c. 31.  
5 G. 2, c. 30.  
19 G. 2, c. 23.



- 24 G. 2, c. 57. *preventing theft and rapine, and concludes with the words and to make some further provisions in relation to the signing of certificates for the discharge of bankrupts, as relates to the prevention of frauds by bankrupts, and to some further provisions in relation to the signing of certificates for the discharge of bankrupts; and also an act passed in the*
- 4 G. 3, c. 33. *fourth year of the reign of his late Majesty king George the third, intituled an act for preventing inconveniences arising in cases of merchants and such other persons as are within the description of the statutes relating to bankrupts being entitled to privilege of parliament, and becoming insolvent; and also so much of an act passed in the thirty-*
- 36 G. 3, c. 90. *sixth year of the reign of his late Majesty, intituled an act for the relief of persons equitably and beneficially entitled to or interested in the several stocks and annuities transferable at the bank of England, as relates to trustees in whose names stock shall be standing at the bank becoming bankrupt, and to bankrupt's refusing to transfer stock standing in their own right; and also an act passed in the thirty-*
- 37 G. 3, c. 124. *seventh year of the reign of his late Majesty, intituled an act to make perpetual an act passed in the fifth year of the reign of his late Majesty, intituled, 'an act to prevent the committing of frauds by bankrupts;' and also so much*
- 45 G. 3, c. 124. *of an act passed in the forty-fifth year of the reign of his late Majesty, intituled an act to amend an act passed in the fourth year of his present Majesty, intituled 'an act for preventing inconveniences arising in cases of merchants and such other persons as are within the description of the statutes relating to bankrupts being entitled to privilege of parliament, and becoming insolvent, and to prevent delay in the entering appearances in actions brought against persons having privilege of parliament,' as relates to the execution of certain bonds by traders having privilege of parliament and to the disobedience by such traders of orders for payment of money;*
- 46 G. 3, c. 135. *and also an act passed in the forty-sixth year of the reign of his late Majesty, intituled an act to amend the laws relating to bankrupts; and also an act passed in the forty-*
- 49 G. 3, c. 121. *ninth year of the reign of his late Majesty, intituled an act to alter and amend the laws relating to bankrupts; and*
- 56 G. 3, c. 137. *also an act passed in the fifty-sixth year of the reign of his late Majesty, intituled an act to extend the provisions of an act in the first year of the reign of king James the first, intituled 'an act for the better relief of the creditors against such as shall become bankrupts;' and also so much*
- 1 G. 4, c. 115. *of an act passed in the first year of the reign of his present Majesty, intituled an act to repeal so much of the several acts passed in the twenty-ninth year of the reign of Elizabeth, the fourth of George the first, the fifth and eighth of George the second, as inflicts capital punishment on certain*

offences therein specified, and to provide more suitable and effectual punishment for such offences, as relates to the punishments of frauds committed by bankrupts; and also an act passed in the third year of the reign of his present Majesty, intituled *an act to amend the laws relating to bankrupts under joint commissions*; and also another act passed in the third year of his present Majesty, intituled *an act to amend the laws relating to bankrupts*; and also another act passed in the fifth year of the reign of his present Majesty, intituled *an act to consolidate and amend the bankrupt laws*, be hereby repealed.

And be it enacted, that all bankers, brokers (a), and persons using the trade or profession of a scrivener, receiving other men's monies or estates into their trust or custody (b), and persons insuring ships or their freight, or other matters, against perils of the sea, warehousemen, wharfmen,

shipwrights, victuallers, coffee houses, dyers, printers, title or sheep salesmen, and all handize by way of bargain, consignment, or otherwise, and all persons who, either factors (d) for others, seeking (e), or by buying and selling of goods or commodities, become bankrupt: provided, that no labourer, or workman for hire (e), or member of or subscriber to any trading company or association (f), shall be deemed true of this act to become bankrupt.

What persons shall be deemed traders liable to become bankrupt.

What persons not liable

at if any such trader shall depart out of this realm shall remain absenting; beginning to keep house; yielding to prison, fraudulent outlawry, arrest, attachment, execution, conveyance, surrender, or gift.

Departing the realm; absenting; beginning to keep house; yielding to prison, fraudulent outlawry, arrest, attachment, execution, conveyance, surrender, or gift.

or procure himself to be arrested (g), or his goods, money, or chattels to be attached, sequestered (g), or taken, in execution, or make or cause to be made, either within this realm, or elsewhere, any fraudulent grant or conveyances of any of his lands, tenements, goods or chattels (g), or make or cause to be made any fraudulent surrender of any of his copy-

(a) First made liable under 5 Geo. 2, c. 30.

(b) 31 Jac. 1, c. 18, s. 2.

(c) 13 Eliz. c. 7, s. 1; 1 Jac. 1, c. 15, s. 2.

(d) 5 Geo. 2, c. 30, s. 39.

(e) 5 Geo. 2, c. 30, s. 40.

(f) 13 & 14 Car. 2, c. 24, extended to all companies.

(g) 1 Jac. 1, c. 15, s. 2.

Acts of bankruptcy.

*hold lands or tenements, or make or cause to be made, any fraudulent gift, delivery, or transfer of any of his goods or chattels ; every such trader doing, suffering, procuring, executing, permitting, making, or causing to be made any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his creditors, shall be deemed to have thereby committed an act of bankruptcy.—[Arch. B. L. 34.]*

Conveyance of all a trader's property not to be an act of bankruptcy, unless a commission issue within six months.

*IV. And be it enacted, That where any such trader shall, after this act shall have come into effect, execute any conveyance or assignment, by deed, to a trustee or trustees, of all his estate and effects, for the benefit of all the creditors of such trader, the execution of such deed shall not be deemed an act of bankruptcy, unless a commission issue against such trader within six calendar months from the execution thereof by such trader ; provided that such deeds shall be executed by every such trustee within fifteen days after the execution thereof by the said trader, and that the execution by such trader, and by every such trustee be attested by an attorney or solicitor ; and that notice be given within two months after the execution thereof by such trader, in case such trader reside in London, or within forty miles thereof, in the London Gazette, and also in two London daily newspapers ; and in case such trader does not reside within forty miles of London, then in the London Gazette, and also in one London daily newspaper, and one provincial newspaper published near to such trader's residence ; and such notice shall contain the date and execution of such deed, and the name and place of abode respectively of every such trustee, and of such attorney or solicitor. [Arch. B. L. 42.]*

Proviso as to the execution ;

and notice in the Gazette and newspapers.

Lying in prison ;

*V. And be it enacted, That if any such trader, having been arrested or committed to prison for debt (a), or on any attachment for non-payment of money, shall, upon such or any other arrest or commitment for debt, or non-payment of money, or upon any detention for debt, lie in prison for twenty-one days, or having been arrested or committed to prison for any other cause, shall lie in prison for twenty-one days after any detainer for debt lodged against him, and not discharged, every such trader shall be thereby deemed to have committed an act of bankruptcy ; or if any such trader, having been arrested, committed, or detained for debt, shall escape out of prison or custody (a), every such trader shall be deemed to have thereby committed an act of bankruptcy from the time of such arrest, commitment, or detention ; provided, that if any such trader shall be in prison at the time of the commencement of this act, such trader shall not be deemed to have committed an act of bankruptcy by lying in prison, until he shall have lain in prison for the period of two months. [Arch. B. L. 45.]*

escaping out of prison, acts of bankruptcy.

Proviso as to lying in prison at the passing of the act.

VI. And be it enacted, That if any such trader shall file in the office of the Lord Chancellor's secretary of bankrupts, a declaration in writing, signed by such trader, and attested by an attorney or solicitor, that he is insolvent or unable to meet his engagements, the said secretary of bankrupts, or his deputy, shall sign a memorandum that such declaration hath been filed, which memorandum shall be authority for the printer of the London Gazette, to insert an advertisement of such declaration therein; and every such declaration shall, after such advertisement inserted as aforesaid, be an act of bankruptcy committed by such trader at the time when such declaration was filed; but no commission shall issue thereupon, unless it be sued out within two calendar months next after the insertion of such advertisement, and unless such advertisement shall have been inserted in the London Gazette within eight days after such declaration was filed; and no docket shall be struck upon such act of bankruptcy before the expiration of four days next after insertion of such advertisement, in case such commission is to be executed in London, or before the expiration of eight days next after such insertion, in case such commission is to be executed in the country; and the Gazette containing such advertisement shall be evidence to be received of such declaration having been filed.—[Arch. B. L. 47.]

Declaration of insolvency left at the Bankrupt Office an act of bankruptcy.

Advertisement to be inserted in London Gazette.

Commission must issue within two months.

Docket not to be struck before four days in a town, or eight in a country commission. Gazette evidence.

VII. And be it enacted, That no commission under which the adjudication shall be grounded on the act of bankruptcy, being the filing of such declaration, shall be deemed invalid by reason of such declaration having been concerted or agreed upon between the bankrupt and any creditor or other person.—[Arch. B. L. 48.]

Declaration concerted between bankrupt and creditor not to invalidate commission.

VIII. And be it enacted, That if any such trader, liable by virtue of this act to become bankrupt, shall, after a docket struck (a) against him, pay to the person or persons who struck the same, or any of them, money, or give and deliver to any such person any satisfaction or security for his debt, or any part thereof, whereby such person may receive more in the pound in respect of his debts than the other creditors, such payment, gift, delivery, satisfaction, or security, shall be an act of bankruptcy; and if any commission shall have issued upon the docket so struck as aforesaid, the Lord Chancellor may either declare such commission to be valid, and direct the same to be proceeded in, or may order it to be superseded, and a new commission may issue, and such commission may be supported either by proof of such last-mentioned, or of any other act of bankruptcy; and every person so receiving such money, gift, delivery, satisfaction, or security as aforesaid, shall forfeit his whole debt, and also repay or deliver up such money, gift, satisfaction, or security as aforesaid,

Trader compounding with petitioning creditor an act of bankruptcy.

Commission may either be superseded or continued;

Penalty on creditor so compounding.

(a) Instead of "after issuing any commission."

or the full value thereof, to such person or persons as the commissioners acting *under such original commission*, or any new commission, shall appoint, for the benefit of the creditors of such bankrupt (a).—[Arch. B. L. 48.]

Traders having privilege of parliament may be proceeded against as other traders.

IX. And be it enacted, That if any such trader having privilege of parliament, shall commit any of the aforesaid acts of bankruptcy, a commission of bankrupt may issue against him, and the commissioners and all other persons acting under such commission, may proceed thereon in like manner as against other bankrupts (b), but such person shall not be subject to be arrested or imprisoned during the time of such privilege, except in cases hereby made felony (c).—[Arch. B. L. 298.]

Trader having privilege of parliament, not paying or compounding to the satisfaction of the creditor, and also entering an appearance to the action within one month, an act of bankruptcy.

X. And be it enacted, That if any creditor or creditors of any such trader having privilege of parliament to such amount as is hereinafter declared requisite to support a commission, shall file an affidavit or affidavits in any court of Record at Westminster, that such debt or debts is or are justly due to him or them respectively, and that such debtor, as he or they verily believe, is such trader as aforesaid, and shall sue out of the same court a summons, or an original bill and summons against such trader, and serve him with a copy of such summons, if such trader shall not, within *one calendar month* (d) after personal service of such summons, pay, secure, or compound for such debt or debts to the satisfaction of such creditor or creditors, or enter into a bond in such sum, and with two sufficient sureties, as any of the judges of the court out of which such summons shall issue shall approve of, to pay such sum as shall be recovered in such action or actions, together with such costs as shall be given in the same, and within one calendar month next after personal service of such summons, cause an appearance or appearances to be entered to such action or actions, in the proper court or courts in which the same shall have been brought, every such trader shall be deemed to have committed an act of bankruptcy from the time of the service of such summons, and any creditor or creditors of such trader to such amount as aforesaid may sue out a commission against him, and proceed thereon in like manner as against other bankrupts (e).—[Arch. B. L. 298.]

Trader having privilege of parliament, disobeying order of any Court of equity, or in

XI. And be it enacted, That if any decree or order shall have been pronounced in any cause depending in any court of equity, or any order made in any matter of bankruptcy or lunacy against any such trader having privilege of parliament, ordering such trader to pay any sum of money,

(a) 5 Geo. 2, c. 30, s. 24.

(b) 4 Geo. 3, c. 33, s. 3.

(c) 4 Geo. 3, c. 33, s. 4.

(d) In 4 Geo. 3, c. 33, s. 1.

"two months," not calendar months.

(e) 4 Geo. 3, c. 33, s. 1; 45 Geo.

3, c. 124, s. 1,

and such trader shall disobey, the same having been duly served upon him, the person or persons entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof, pursuant to such decree or order, may apply to the court by which the same shall have been pronounced to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such trader, being personally served with such last-mentioned order eight days before the day therein appointed for payment of such money, shall neglect to pay the same, he shall be deemed to have committed an act of bankruptcy from the time of the service thereof, and any such creditor or creditors as aforesaid may sue out a commission against him, and proceed thereon in like manner as against other bankrupts (*a*).—[Arch. B. L. 299.]

XII. And be it enacted, That the Lord Chancellor shall have power, upon petition made to him in writing against any trader having committed any act of bankruptcy, by any creditor or creditors of such trader, by commission under the great seal, to appoint such persons as to him shall seem fit, who shall by virtue of this act and of such commission, have full power and authority to take such order and direction, with the body of such bankrupt, as hereinafter mentioned, as also with all his lands, tenements, and hereditaments, both within this realm and abroad, as well copy or customaryhold as freehold, which he shall have in his own right before he became bankrupt, as also with all such interest in any such lands, tenements, and hereditaments as such bankrupt may lawfully depart withall, and with all his money, fees, offices, annuities, goods, chattels, wares, merchandize, and debts, wheresoever they may be found or known, and to make sale thereof in manner hereinafter mentioned, or otherwise order the same for satisfaction and payment of the creditors of the said bankrupt (*b*).—[Arch. B. L. 62.]

XIII. And be it enacted, That the petitioning creditor shall, before any commission be granted, make an affidavit in writing before a master ordinary or extraordinary in chancery (which shall be filed with the proper officer), of the truth of such his or their respective debt or debts: and shall likewise give bond to the Lord Chancellor in the penalty of two hundred pounds to be conditioned for proving his or their debt or debts, as well before the commissioners as upon any trial at law, in case the due issuing forth of the commission be contested, and also for proving the party to have committed an act of bankruptcy at the time of taking out such commission, and to proceed to such commission; but

bankruptcy, or lunacy, for payment of money after service and peremptory day fixed, an act of bankruptcy.

Power to the Lord Chancellor to issue a commission.

Petitioning creditor shall make oath of his debt, and give bond to the Lord Chancellor.

(*a*) 45 Geo. 3, c. 124, s. 7.

(*b*) 13 Eliz. c. 7, s. 2.

Power to the Lord Chancellor to assign bond.

if such debt or debts shall not be really due, or if after such commission taken out it be not proved that the party had committed an act of bankruptcy at the time of the issuing of the commission, and it shall also appear that such commission was taken out fraudulently or maliciously, the Lord Chancellor shall and may, upon petition of the party or parties *against whom the commission was so taken out* (a), examine into the same, and order satisfaction to be made to him or them for the damages by him or them sustained, and for the better recovery thereof, may assign such bond or bonds to the parties so petitioning, who may sue for the same in his and their name or names (b). [Arch. B. L. 58 & 60.]

Petitioning creditor to prosecute commission at his own costs, until choice of assignees.

XVI. And be it enacted, That the petitioning creditor or creditors shall, at his or their own costs, sue forth and prosecute the commission until the choice of assignees; and the commissioners shall, at the meeting for such choice, ascertain such costs, and by writing under their hands direct the assignees (who are hereby thereto required) to reimburse such petitioning creditor or creditors, such costs out of the first money that shall be got in under the commission (c); *and all bills of fees and disbursements of any solicitor or attorney employed under any commission for business done after the choice of assignees, shall be settled by the commissioners, except that so much of such bills as contain any charge respecting any action at law, or suit in equity, shall be settled by the proper officer of the court in which such business shall have been transacted, and the same, so settled, shall be paid by the assignees to such solicitor or attorney: provided that any creditor who shall have proved to the amount of twenty pounds or upwards, if he be dissatisfied with such settlement by the commissioners, may have any such costs and bills settled by a master in chancery, who shall receive for such settlement, and the certificate thereof, twenty shillings, and no more* (d).---[Arch. B. L. 215, 216, 217].

Bill of costs to be taxed by commissioners.

Creditor may have bills taxed by a master.

Amount of petitioning creditor's debt.

May be upon debt payable at a future time, although no security given.

XV. And be it enacted, That no such commission shall be issued unless the single debt of such creditor, or of two or more persons being partners, petitioning for the same, shall amount to one hundred pounds or upwards, or unless the debt of two creditors so petitioning shall amount to one hundred and fifty pounds or upwards, or unless the debt of three or more creditors so petitioning shall amount to two hundred pounds or upwards (e); and that every person who has given credit to any trader upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when such trader committed an

(a) In 5 Geo. 2, c. 30, s. 23, "or parties *grieved*."  
(b) 5 Geo. 2, c. 30, s. 23.

(c) Id. s. 25.  
(d) Instead of s. 46, *ibid*.  
(e) Id. s. 23.

act of bankruptcy, may so petition or join in petitioning as aforesaid (a), *whether he shall have any security in writing or otherwise for such sum or not.*---[Arch. B. L. 56].

XVI. And be it enacted, That any creditor or creditors whose debt or debts is or are sufficient to entitle him or them to petition for a commission against all the partners of any firm, may petition for a commission against one or more partners of such firm, and every commission issued upon such petition shall be valid although it does not include all the partners of the firm (b); and in every commission against two or more persons it shall be lawful for the Lord Chancellor to supersede such commission as to one or more of such persons, and the validity of such commission shall not be thereby affected as to any person as to whom such commission is not ordered to be superseded, nor shall any such person's certificate be thereby affected (c).---[Arch. B. L. 282. 296.]

Joint commissions may be issued against partners in a firm.

May be superseded as to one or more, without affecting the rest.

XVII. And be it enacted, That if after a commission sued against two or more members of a firm any other commission or commissions shall be issued against any other member or members of such firm, such other commission or commissions shall be directed to the commissioners to whom the first commission was directed, and immediately after the adjudication under such other commission or commissions the commissioners shall convey and assign all the estate real and personal of such bankrupt, or bankrupts to the assignees chosen in the first commission; and after such conveyance all separate proceedings under such other commission or commissions shall be stayed, and such commission or commissions shall, without affecting the validity of the first commission, be annexed to and form part of the same; provided that the Lord Chancellor may direct that such other commission or commissions be issued to any other commissioners, or that such other commission or commissions shall proceed either separately or in conjunction with the first commission (d)—[Arch. B. L. 282.]

In cases of a second or other commission being issued, Lord Chancellor may direct that such commissions be proceeded in separately or in conjunction.

XVIII. And be it enacted, That if after adjudication the debt or debts of the petitioning creditor or creditors, or any of them, be found insufficient to support a commission, it shall be lawful for the Lord Chancellor, upon the application of any other creditor or creditors, having proved any debt or debts sufficient to support a commission, provided such debt or debts has or have been incurred not anterior to the debt or debts of

Proceeding in case petitioning creditor's debt be insufficient to support commission.

(a) 5 Geo. 2, c. 3, s. 22.

(b) If one lend his check to another, such check is not evidence of petitioning creditor's debt, unless it be proved the

check was paid. — Bleasby v. Crossley, 2 Carr. & Payne, 213.

(c) 3 Geo. 4, c. 81, s. 8.

(d) 3 Geo. 4, c. 74.

(e) 3 Geo. 4, c. 81, s. 9.



*the petitioning creditor or creditors, to order the said commission to be proceeded in, and it shall by such order be deemed valid.*---[Arch. B. L. 58.]

Commission not invalid by reason of prior act of bankruptcy.

XIX. *And be it enacted, That no commission shall be deemed invalid by reason of any act or acts of bankruptcy prior to the debt or debts of the petitioning creditor or creditors, or any of them, provided there be a sufficient act of bankruptcy subsequent to such debt or debts.*---[Arch. B. L. 55.]

Auxiliary commissions for proof of debts or examination of witnesses.

XX. *And be it enacted, That it shall be lawful for the Lord Chancellor to direct an auxiliary commission to issue for proof of debts under twenty pounds, and for the examination of witnesses on oath, or for either of such purposes; and the commissioners in every such commission issued for the examination of witnesses shall possess the same powers to compel the attendance of and to examine witnesses, and to enforce both obedience to such examination, and the production of books, deeds, papers, writings, and other documents, as are possessed by the commissioners in any original commission; provided always, that all such examinations of witnesses under such commission shall be taken down in writing, and shall be annexed to and form part of the original commission.*---[Arch. B. L. 20.]

Examinations to be annexed to the original commission.

Commissioners' oath.

XXI. *And be enacted, That no commissioner shall be capable of acting in the execution of any of the powers and authorities given by this act (except the power hereby given of administering the oath next hereinafter mentioned) until he shall have taken an oath in the presence of one or more of the said commissioners, to the effect following; (that is to say),*

*' I A. B. do swear, That I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me as a commissioner in a commission of bankruptcy against and that without favor or affection, prejudice or malice.*

*' So help me GOD.'*

How to be administered.

*Which oath (a) the commissioners are hereby empowered and required to administer one to another in the same commission named; and they shall enter and keep a memorial or memorials thereof, signed by them respectively, among the proceedings under each commission (b).—[Arch. B. L. 7, 8, 55.]*

Commissioners' fees.

XXII. *And be it enacted, That the said commissioners shall receive and be paid the fee of twenty shillings each commissioner for every meeting, and the like sum for every deed of conveyance executed by them, and for the signature of the bankrupt's certificate; and where any commission shall be*

(a) 5 Geo. 2, c. 30, s. 44, "any two or more of the said." (b) Id. s. 43, 44.

*executed in the country, every commissioner, being a barrister at law, shall receive a further fee of twenty shillings for each meeting; and in case the usual place of residence of such commissioner, being a barrister, is distant seven miles or upwards from the place where such meetings are holden, and he shall travel such distance to any such meeting, he may recover a further sum of twenty shillings for every such meeting; and every commissioner who shall receive from the creditors, or out of the estate of the bankrupt, any further sum than as aforesaid, or who shall eat or drink at the charge of the creditors, or out of the estate of the bankrupt, or order any such expense to be made, shall be disabled for ever from acting in such or any other commission (a).—[Arch. B. L. 9].*

**XXIII.** *And be it enacted, That at every meeting under any commission to be executed in the country, wherein any one or more of the commissioners named may be a barrister or barristers, such barrister or barristers, or as many of them as shall be willing to attend, not exceeding three at each meeting, shall be the acting commissioner or commissioners, and shall be entitled to his or their summonses and fees accordingly, in priority to any of the other commissioners in the said commission named.* Commissioners in country commissions being barristers, entitled to preference.  
[Arch. B. L. 9.]

**XXIV.** *And be it enacted, That it shall be lawful for the commissioners, after they shall have taken such oath as aforesaid, by writing under their hands, to summon before them any person whom they shall believe capable of giving any information concerning the trading of, or any act or acts of bankruptcy committed by, the person or persons, against whom such commission is issued, and also to require any person so summoned to produce any books, papers, deeds, and writings, and other documents in the custody, possession, or power of such person, which may appear to the said commissioners to be necessary to establish such trading or act or acts of bankruptcy; and it shall be lawful for the said commissioners to examine any such person upon oath, by word of mouth, or interrogatories in writing, concerning the trade of, or any act or acts of bankruptcy committed by, the person or persons against whom such commission shall have issued; and every such person so summoned shall incur such danger or penalty for not coming before the commissioners, or for refusing to be sworn and examined, or for not fully answering to the satisfaction of the said commissioners, or for refusing to sign and subscribe his examination, or for refusing to produce or for not producing any such book, paper, deed, writing, or document, as is hereby provided as to persons summoned after the adjudication of bankruptcy (b); and the commission-* Commissioners before adjudication may summon persons to give evidence of trading and act of bankruptcy.  
Adjudication.

(a) 5 Geo. 2, c. 30, s. 22.

(b) 3 Geo. 4, c. 81, s. 1.

ers, upon proof made before them of the petitioning creditor's debt or debts, and of the trading and act or acts of bankruptcy of the person or persons against whom such commission is issued, shall thereupon adjudge such person or persons bankrupt.---[Arch. B. L. 66, 69].

Commissioners to appoint meetings, and to give notice in the London Gazette.

XXV. And be it enacted, That the commissioners after they have so adjudged as aforesaid, shall forthwith cause notice of such adjudication to be given in the *London Gazette*, and shall thereby appoint three public meetings for the bankrupt to surrender and conform, the last of which meetings shall be on the forty-second day hereby limited for such surrender (a).—[Arch. B. L. 70.]

Commissions not to abate by death of the king, &c.

XXVI. And be it enacted, That no commission shall abate by reason of a demise of the crown, and (if by reason of the death of commissioners, or for any other cause, it become necessary (any commission may be renewed, but only half the fees usually paid upon obtaining commissions shall be paid for the same (b) ; and if any bankrupt shall die after adjudication, the commissioners may proceed in the commission as they might have done if he were living (c).—[Arch. B. L. 8, 63.]

Messenger may break open the bankrupt's doors, &c. and seize upon his body or property.

XXVII. And be it enacted, That it shall be lawful for any person appointed by the commissioners, by their warrant under their hands and seals to break open any house, chamber, shop, warehouse, door, trunk, or chest of any bankrupt, where such bankrupt or any of his property shall be reputed to be, and seize upon the body or property of such bankrupt ; and if the bankrupt be in prison or in custody, it shall be lawful for the person so appointed as aforesaid to seize any property (his necessary wearing apparel only excepted) in the custody or possession of such bankrupt, or of any other person, in any prison or place where such bankrupt is in custody (d).—[Arch. B. L. 71.]

Messenger may seize goods in Ireland.

XXVIII. And be it enacted, That it shall be lawful for the person so appointed by the commissioners as aforesaid, to break open any house, chamber, shop, warehouse, door, trunk, or chest of such bankrupt in Ireland, where any of the property of such bankrupt shall be reputed to be, and seize the same ; provided such warrant as aforesaid shall have been verified upon oath by the attorney or solicitor suing out the commission, before the mayor or other chief magistrate of the city, borough, or town corporate where or near to which the said commission is executed, and verified under the common seal thereof, or the seal of the office of such mayor or other magistrate ; and provided also, that the person thereby appointed shall, before a justice of peace residing in the county where

(a) 5 Geo. 2, c. 30, s. 2.

(b) Id. s. 45.

(c) 1 Jac. 1, c. 15, s. 17.

(d) 21 Jac. 1, c. 19, s. 8.

such property shall be reputed to be, depose upon oath that he is the person named in such warrant.—[Arch. B. L. 72.]

XXIX. And be it enacted, That in all cases where it shall be made to appear to the satisfaction of any justice of peace in England or Ireland, that there is reason to suspect and believe that property of the bankrupt is concealed in any house, premises, or other place not belonging to such bankrupt, such justice of peace is hereby directed and authorized to grant a search warrant to the person so deputed by the commissioners as aforesaid, and it shall be lawful for such person to execute the same in like manner, and such person shall be entitled to the same protection as is allowed by law in execution of a search warrant for property reputed to be stolen and concealed. (a)—[Arch. B. L. 72.]

Messenger may obtain search warrant, where property of the bankrupt is sworn to be concealed.

XXX. And be it enacted, That if in the execution of any warrant of seizure so granted by the commissioners as aforesaid, it shall be necessary to break open any house, chamber, shop, warehouse, door, trunk, or chest of such bankrupt in Scotland, where any of the property of such bankrupt shall be reputed to be, or to seize and get possession of such property; such warrant, after having been verified upon oath as aforesaid, may be backed or indorsed with the name of a judge ordinary or justice of the peace in Scotland, who are hereby required, within their respective jurisdictions, to back or indorse the same; and such warrant so indorsed shall be sufficient authority to the person bringing such warrant, and to all officers of law in Scotland, to execute the same within the county or burgh wherein it is so indorsed, and in virtue thereof to break open the house, chamber, shop, warehouse, door, trunk, or chest of such bankrupt, and to seize and take possession of such property to be distributed under the said commission, or otherwise dealt with according to law.—[Arch. B. L. 72.]

Execution of such warrant in Scotland.

XXXI. And be it enacted, That no action shall be brought against any person so appointed by the commissioners, for any thing done in obedience to their warrant prior to the choice of assignees, unless demand of the perusal and copy of such warrant hath been made or left at the usual place of abode of such person or persons by the party or parties intending to bring such action, or by his or their attorney or agent, in writing, signed by the party or parties demanding the same, and unless the same hath been refused or neglected for six days after such demand; and if after such demand and compliance therewith, any action be brought against the person so appointed as aforesaid, without making the petitioning creditor or creditors, de-

As to actions against persons acting in obedience to warrant of commissioners.

(a) Such warrant to search for goods of a bankrupt in the house of a third person, is not valid, if granted to any one except the messenger under the commission. *Sly v. Stevenson*, 2 Carr. & Payne, 464.

*fendant or defendants, if living, on producing and proving such warrant at the trial of such action, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the commissioners; and if such action be brought against the petitioning creditor or creditors and the person so appointed as aforesaid, the jury shall, on proof of such warrant, give their verdict for the person so appointed as aforesaid; notwithstanding any such defect of jurisdiction as aforesaid; and if the verdict shall be given against the petitioning creditor or creditors, the plaintiff or plaintiffs shall recover his or their costs against him or them, to be taxed so as to include such costs as the plaintiff or plaintiffs are liable to pay to the person so appointed as aforesaid.—[Arch. B. L. 13.]*

Proof in such actions that defendants are petitioning creditors renders them liable.

XXXII. *And be it enacted, That any such action so brought as aforesaid, against the petitioning creditor or creditors, either alone or jointly with the person so appointed by the commissioners as aforesaid, for any thing done in obedience to their warrant, proof by the plaintiff or plaintiffs in such action that the defendant or defendants, or any of them, are petitioning creditors, shall be sufficient for the purpose of making such defendant or defendants liable, in the same manner, and to the same extent, as if the act complained of in such action, had been done or committed by such defendant or defendants.—[Arch. B. L. 14.]*

Commissioners empowered to summon persons suspected of having bankrupt's property in their hands, &c.; and compel them to produce books, &c.

XXXIII. *And be it enacted, That after adjudication, it shall be lawful for the commissioners, by writing under their hands, to summon before them any person known or suspected to have any of the estate of the bankrupt in his possession, or who is supposed to be indebted to the bankrupt, or any person whom the commissioners believe capable of giving information concerning the person, trade, dealings, or estate of such bankrupt, or concerning any act or acts of bankruptcy committed by him, or any information material to the full disclosure of the dealings of the bankrupt; and it shall be lawful for the said commissioners to require such person to produce any books, papers, deeds, writings, or other documents in his custody or power, which may appear to the commissioners necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which the commissioners are authorised to inquire into; and if such person so summoned as aforesaid shall not come before the commissioners at the time appointed, having no lawful impediment, (made known to the said commissioners at the time of their meeting, and allowed by them), it shall be lawful for the said commissioners, by warrant under their hands and seals, to authorise and direct the person or persons therein named for that purpose, to apprehend and arrest such person, and*

bring him before them to be examined as aforesaid (a).—  
[Arch. B. L. 194.]

XXXIV. And be it enacted, That upon the appearance of any person so summoned or brought before the commissioners as aforesaid, or if any person be present at any meeting of the commissioners, it shall be lawful for them to examine every such person upon oath, either by word of mouth or by interrogatories in writing, concerning the person, trade, dealings, or estate of such bankrupt, or concerning any act or acts of bankruptcy by such bankrupt committed, and to reduce into writing the answers of every such person, and such answers so reduced into writing the party examined is hereby required to sign and subscribe; and if any such person shall refuse to be sworn, or shall refuse to answer any lawful questions put to him by the said commissioners touching any of the matters aforesaid, or shall not fully answer to the satisfaction of the said commissioners any such lawful questions, or shall refuse to sign and subscribe his examination so reduced into writing as aforesaid, (not having any lawful objection allowed by the said commissioners), or shall not produce any books, papers, deeds, and writings, and other documents in his custody or power relating to any of the matters aforesaid, which such person was required by the commissioners to produce, and to the production of which he shall not state any objection allowed by the said commissioners, it shall be lawful for them, by warrant under their hands and seals, to commit him to such prison as they shall think fit, there to remain without bail, until he shall submit himself to them to be sworn, and full answers make to the[ir] satisfaction, to all such lawful questions as shall be put to him, and sign and subscribe such examination, and produce such books, papers, deeds, writings, and other documents as aforesaid in his custody or power, to the production of which no such objection as aforesaid has been allowed (b).—[Arch. B. L. 195.]

Power to examine persons summoned, or present at any meeting.

Persons refusing to be sworn, or to answer, or not fully answering, or refusing to sign examination, or to produce books, &c. may be committed.

XXXV. And be it enacted, That where any person known or suspected to have any of the estate of the bankrupt in his possession, or who is supposed to be indebted to the bankrupt, shall be summoned to attend before the said commissioners, every such person shall have such costs and charges as the said commissioners in their discretion shall think fit; and every witness summoned to attend before the commissioners shall have his necessary expenses tendered to him, in like manner as is now by law required upon service of a subpoena to a witness in an action at law (c).—[Arch. B. L. 67, 198.]

Persons known or suspected to have bankrupt's property to have costs.

Witnesses to have expenses tendered.

XXXVI. And be it enacted, That it shall be lawful for Commission-

(a) 13 Eliz., c. 7. s. 5 & 6. 1 Jac. 1, c. 15, s. 10.

(b) 5 Geo. 2, c. 30, s. 16.

(c) 3 Geo. 4, c. 81, s. 2.

ers may sum-  
mon bank-  
rupt;

Power to ex-  
amine the  
bankrupt.

Bankrupt re-  
fusing to be  
sworn, or an-  
swer, or not  
fully answer-  
ing, or to sign  
his examina-  
tion, may be  
committed.

Commission-  
ers may sum-  
mon and ex-  
amine the  
bankrupt's  
wife.

Penalty on

the commissioners, by writing under their hands, to sum-  
mon any bankrupt before them, whether such bankrupt  
shall have obtained his certificate or not; and in case he  
shall not come at the time by them appointed, (having no  
lawful impediment made known to them at such time, and  
allowed by them), it shall be lawful for the said commis-  
sioners, by warrant under their hands and seals, to authorise  
and direct any person or persons they shall think fit to ap-  
prehend and arrest such bankrupt, and bring him before  
them; and upon the appearance of such bankrupt, or if  
such bankrupt be present at any meeting of the said com-  
missioners, it shall be lawful for them to examine such  
bankrupt upon oath, either by word of mouth, or on in-  
terrogatories in writing, touching all matters relating either  
to his trade, dealings, or estate, or which may tend to dis-  
close any secret grant, conveyance, or concealment of his  
lands, tenements, goods, money, or debts, and to reduce  
his answers into writing, which examination, so reduced  
into writing, the said bankrupt shall sign and subscribe;  
and if such bankrupt shall refuse to be sworn, or shall refuse  
to answer any questions put to him by the said commissioners  
touching any of the matters aforesaid, or shall not fully an-  
swer to the satisfaction of the said commissioners any such  
questions, or shall refuse to sign and subscribe his examina-  
tion so reduced into writing as aforesaid, (not having any  
lawful objection allowed by the said commissioners), it shall  
be lawful for the said commissioners, by warrant under their  
hands and seals, to commit him to such prison as they shall  
think fit, there to remain without bail until he shall submit  
himself to the said commissioners to be sworn, and full an-  
swers make to their satisfaction to such questions as shall  
be put to him, and sign and subscribe such examination (a).  
[Arch. B. L. 184, 186, 273.]

XXXVII. And be it further enacted, That it shall be law-  
ful for the commissioners, in manner aforesaid, to summon  
before them the wife of any bankrupt, in manner aforesaid,  
to examine her for the finding out and discovery of the  
estate, goods, and chattels of such bankrupt, concealed,  
kept, or disposed of by such wife, in her own person, or by  
her own act, or by any other person, and she shall incur such  
danger or penalty for not coming before the commissioners,  
or for refusing to be sworn and examined, or for refusing to  
sign or subscribe her examination, or for not fully answering  
to the satisfaction of the commissioners, as is hereby provid-  
ed against other persons (b).—[Arch. B. L. 196.]

XXXVIII. And be it enacted, That if any goaler to whose

(a) 1 Jac. 1, c. 15, s. 7. 8. 21 Jac. 1, c. 19, s. 7. 5 Geo. 2, c. 30,  
s. 16.

(b) 21 Jac. 1, c. 19, s. 6, 6.

custody any bankrupt or other person shall be committed as gaoler for escape, shall suffer such bankrupt or other person to escape, every such gaoler shall forfeit five hundred pounds (a).  
[Arch. B. L. 190.]

XXXIX. And be it enacted, That if any person be committed by the commissioners for refusing to answer or for not fully answering any question put to him by the said commissioners, they shall in their warrant of commitment specify every such question: provided, that if any person committed by the commissioners shall bring any habeas corpus in order to be discharged from such commitment, and there shall appear on the return of such habeas corpus any such insufficiency in the form of the warrant whereby such person was committed, by reason whereof he might be discharged, it shall be lawful for the court or judge before whom such party shall be brought by habeas corpus, and such court or judge is hereby required to commit such person to the same prison, there to remain until he shall conform, unless it shall be shewn to such court or judge, by the party committed, that he has fully answered all lawful questions put to him by the commissioners: or if such person was committed for refusing to be sworn, or for not signing his examination, unless it shall appear to such court or judge that he had a sufficient reason for the same (b); *provided also that such court or judge shall, if required thereto by the party committed, in case the whole of the examination of the party so committed, shall not have been stated in the warrant of commitment, inspect and consider the whole of the examination of such party, whereof any such question was a part; and if it shall appear from the whole examination that the answer or answers of the party committed, is or are satisfactory, such court or judge shall and may order the party so committed to be discharged.*—[Arch. B. L. 190, 191.]

Questions to be particularly specified on warrant.

If habeas corpus be brought, the judge may re-commit the prisoner.

Court or judge may look at the whole of the examination.

XL. And be it enacted, That in every action in respect of any such commitment brought by any bankrupt or other person committed, the court or judge before which or whom such action is tried shall, if thereto required by the defendant or defendants in such action, (in case the whole of the examination of the party so committed shall not have been stated in the warrant of commitment), inspect and consider the whole of such examination; and if upon such inspection and consideration it shall appear to such court or judge, that the party was lawfully committed, the defendant or defendants in such action, shall have the same benefit therefrom, as if the whole of such examination had been therein stated.—[Arch. B. L. 12, 192.]

In actions of false imprisonment, the court may look at the whole of the examination of the party committed.

XLI. And be it enacted, That no writ shall be sued out

No writ to be sued out

(a) By sec. 100, all forfeitures are to be divided amongst the creditors.

(b) 5 Geo. 2, c. 30, s. 18.



against any commissioner in less than a month after notice given.

Notice to set forth cause of action, &c.

Plaintiff shall not recover unless notice proved, and no evidence shall be given to any thing not contained in the notice.

Tender of amends within one month after notice, and pleaded in bar, &c.

Amends may be paid into court before issue joined.

against, nor copy of any process served on any commissioner, for any thing by him done as such commissioner, unless notice in writing of such intended writ or process shall have been delivered to him, or left at his usual place of abode by the attorney or agent for the party intending to sue, or cause the same to be sued out or served, at least one calendar month before the suing out or serving the same; and such notice shall set forth the cause of action which such party has or claims to have against such commissioner, and on the back of such notice shall be indorsed the name of such attorney or agent, together with the place of his abode, who shall receive no more than twenty shillings for preparing and serving such notice. [Arch. B. L. 10.]

XLII. And be it enacted, That no such plaintiff shall recover any verdict against such commissioner, in any case where the action shall be grounded on any act of the defendant as commissioner, unless it is proved upon the trial of such action, that such notice was given as aforesaid, but in default thereof, such commissioner shall recover a verdict and costs, as herein-after mentioned (a); and no evidence shall be permitted to be given by the plaintiff on the trial of any such action of any cause of action, except such as is contained in the notice.--- [Arch. B. L. 11.]

XLIII. And be it enacted, That every such commissioner may, at any time within one calendar month after such notice, tender amends to the party complaining, or to his agent or attorney; and if the same is not accepted, may plead such tender in bar to any action brought against him, grounded on such writ or process, together with the plea of not guilty, and any other plea, with leave of the court; and if upon issue joined thereon, the jury shall find the amends so tendered to have been sufficient, they shall give a verdict for the defendant; and if the plaintiff shall become nonsuit, or shall discontinue his action, or if judgment shall be given for such defendant upon demurrer, such commissioner shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only; and if upon issue so joined, the jury shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant on such other plea or pleas, they shall give a verdict for the plaintiff, and such damages as they shall think proper, which he shall recover together with costs of suit: provided that if any such commissioner shall neglect to tender any amends, or shall have tendered insufficient amends before the action brought, he may, by leave of the court where such action shall depend, at any time before issue joined, pay into court such sum of money as he shall think fit, whereupon such proceedings shall be had in court as in other

(a) By sec. 44, double costs.

actions where the defendant is allowed to pay money into court.

—[Arch. B. L. 11.]

XLIV. And be it enacted, That every action brought against any person for any thing done in pursuance of this act, shall be commenced within three calendar months next after the fact committed; and the defendant or defendants in such action may plead the general issue, and give this act and the special matter in evidence at the trial, and that the same was done by authority of this act; and if it shall appear so to have been done, or that such action was commenced after the time before limited for bringing the same, the jury shall find for the defendant or defendants; and if there be a verdict for the defendant or defendants, or if the plaintiff or plaintiffs shall be nonsuited, or discontinue his or their action or suit after appearance thereto, or if upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall recover double costs (a).—[Arch. B. L. 11, 15, 258, 267.]

Limitation of actions.

General issue.

Double costs.

XLV. And be it enacted, That it shall be lawful for the commissioners as often as they shall think fit, by writing under their hands, to appoint one or more person or persons an assignee or assignees of the bankrupt's real and personal estate, or of any part thereof, which assignee or assignees shall or may be removed at the meeting of the creditors for the choice of assignees, if they shall think fit; and such assignee or assignees so removed shall deliver up and assign all the estate of the bankrupt come to his or their possession to the assignees so chosen as hereinafter mentioned, and all the estate of the bankrupt, which shall be so delivered up and assigned, shall be as effectually and legally vested in the assignee so chosen as aforesaid, as if the first assignment had been made to them by the commissioners; and if such first assignee or assignees shall not within ten days after notice given of the said choice of assignees, and of their consent to accept such assignment, signified to the first assignee or assignees by writing under their hands, make such assignment and delivery as aforesaid, every such assignee shall forfeit two hundred pounds (b).—[Arch. B. L. 69.]

Commissioners may appoint assignees until others are chosen by creditors.

Penalty on first assignee for not delivering the effects to the new ones, £200.

XLVI. And be it enacted, That at the three several meetings so appointed by the commissioners as aforesaid, and at every other meeting by them appointed for proof of debts, (whereof and of the purport whereof, ten days notice shall have been given in the *London Gazette*), every creditor of the bankrupt may prove his debt by his own oath (c);

Debts, how to be proved.

(a) Instead of 1 Jac. 1, c. 15, s. 16, marks, that requiring debts to be proved by the creditor's own

(b) 5 Geo. 2, c. 30, s. 30.

(c) Mr. Archbold, (p. 107,) re- in some cases: for instance, in

By corporations, &c.

By creditor remote or abroad.

Creditor may be examined upon oath.

*Bona fide* creditors shall be admitted to prove, notwithstanding any secret act of bankruptcy.

Commissioners may order six months' wages of servants or clerks of bankrupt to be paid.

Apprentices discharged from their indentures.

and all bodies politic and public companies incorporated or authorised to sue or bring actions, either by charter or act of parliament, may prove by an agent, provided such agent shall in his deposition swear that he is such agent as aforesaid, and that he is authorised to make such proof; and if any creditor shall live remote from the place of the meeting of the commissioners, he may prove by affidavit, sworn before a Master in Chancery, ordinary or extraordinary; or if such creditor shall live out of England, by affidavit sworn before a magistrate where such creditor shall be residing, and attested by a notary public, British minister or consul; and no creditor shall pay any contribution on account of any such debt, provided that it shall be lawful for the said commissioners to examine upon oath, either by word of mouth or by interrogatories in writing, every person claiming to prove a debt under the said commission, or to require such further proof, and to examine such other persons in relation thereto, as they shall think fit (a).—[Arch. B. L. 107, 109, 119.]

XLVII. And be it enacted, That every person with whom any bankrupt shall have really and *bona fide* contracted any debt or demand before the issuing the commission (b) against him, shall, notwithstanding any prior act of bankruptcy committed by such bankrupt, be admitted to prove the same, and be a creditor under such commission, as if no such act of bankruptcy had been committed, provided such person had not, at the time the same was contracted, notice of any act of bankruptcy by such bankrupt committed (c).—[Arch. B. L. 76.]

XLVIII. And be it enacted, That when any bankrupt shall have been indebted, at the time of issuing the commission against him, to any servant or clerk of such bankrupt, in respect of the wages or salary of such servant or clerk, it shall be lawful for the commissioners, upon proof thereof, to order so much as shall be so due as aforesaid, not exceeding six months' wages or salary, to be paid to such servant or clerk out of the estate of such bankrupt; and such servant or clerk shall be at liberty to prove under the commission for any sum exceeding such last-mentioned amount.—[Arch. B. L. 88.]

XLIX. And be it enacted, that where any person shall be an apprentice to a bankrupt at the time of issuing of the commission against him, the issuing of such commission shall be and endure as a complete discharge of the indenture or indentures

the great coal and other mining concerns in the north and west of England, the agent is often the only person who can conscientiously swear to the debt; the proprietor himself knows little, if any thing, about it."

(a) 21 Jac. 1, c. 19, s. 9, altered.

(b) The issuing of a commission is the act of delivering it into the hands of the messenger. *Watkins v. Maude*, 3 Camp. 309.

(c) 46 Geo. 3, c. 135, s. 2.

whereby such apprentice was bound to such bankrupt; and if any sum shall have been really and bona fide paid, by or on the behalf of such apprentice to the bankrupt, as an apprentice fee, it shall be lawful for the commissioners, upon proof thereof, to order any sum to be paid to or for the use of such apprentice which they shall think reasonable, regard being had, in estimating such sum, to the amount of the sum so paid by or on behalf of such apprentice to the bankrupt, and to the time during which such apprentice shall have resided with the bankrupt previous to the issuing of the commission.—[Arch. B. L. 89.]

L. And be it enacted, That where there has been mutual credit given by the bankrupt and any other person, or where there are mutual debts between the bankrupt and any other person, the commissioners shall state the account between them, and one debt or demand may be set against another, notwithstanding any prior act of bankruptcy committed by such bankrupt before the credit given to or the debt contracted by him, and what shall appear due on either side on the balance of such account, and no more shall be claimed or paid on either side respectively, and every debt or demand hereby made provable against the estate of the bankrupt, may also be set off in manner aforesaid against such estate; provided that the person claiming the benefit of such set-off had not, when such credit was given, notice of an act of bankruptcy by such bankrupt committed (a).—[Arch. B. L. 91.]

LI. And be it enacted, That any person who shall have given credit to the bankrupt upon valuable consideration, for any money or other matter or thing whatsoever, which shall not have become payable when such bankrupt committed an act of bankruptcy, and whether such credit shall have been given upon any bill, bond, note, or other negotiable security or not, shall be entitled to prove such debt, bill, bond, note, or other security, as if the same was payable presently, and receive dividends equally with the other creditors, deducting only thereout a rebate of interest for what he shall so receive, at the rate of five per cent., to be computed from the declaration of a dividend to the time such debt would have become payable according to the terms upon which it was contracted (b).—[Arch. B. L. 76, 77.]

LII. And be it enacted, That any person who at the issuing the commission shall be a surety or liable for any debt of the bankrupt, or bail for the bankrupt, either to the sheriff or to the action, if he shall have paid the debt, or any part thereof in discharge of the whole debt (although

Commissioners may order any sum to be paid in respect of apprentice fees.

Mutual debts and credits may be set off, notwithstanding a secret act of bankruptcy.

Debts not payable at the time of the bankruptcy may be proved, deducting rebate of interest.

Sureties and persons liable for the debts of bankrupts may prove, after having

(a) 5 Geo. 2, c. 30, s. 28; and 46 Geo. 3, c. 135, s. 3.

(b) 2 Geo. 1, c. 31, s. 1; and 49 Geo. 3, c. 121, s. 9.

paid such  
debts.

he may have paid the same after the commission issued) if the creditor shall have proved his debt under the commission, shall be entitled to stand in the place of such creditor as to the dividends and all other rights under the said commission which such creditor possessed or would be entitled to in respect of such proof; or if the creditor shall not have proved under the commission, such surety or person liable, or *bail*, shall be entitled to prove his demand in respect of such payment as a debt under the commission, not disturbing the former dividends, and may receive dividends with the other creditors, although he may have become surety liable or bail as aforesaid, after an act of bankruptcy committed by such bankrupt; provided that such person had not, when he became such surety or *bail*, or so liable as aforesaid, notice of any act of bankruptcy by such bankrupt committed.—[Arch. B. L. 96.]

Obligee in bot-  
tomry or re-  
spondentia  
bonds, and as-  
sured in policy  
of insurance  
admitted to  
claim; and  
after loss to  
prove.

LIII. And be it enacted, That the obligee in any bot-  
tomry or respondentia bond, and the assured in any policy  
of insurance made upon good and valuable consideration,  
shall be admitted to claim, and after the loss or contin-  
gency shall have happened, to prove his debt or demand  
in respect thereof, and receive dividends with the other  
creditors as if the loss or contingency had happened before  
the issuing the commission against such obligor or in-  
surer (a); and that the person effecting any policy of in-  
surance upon ships or goods with any person, as a subscriber  
or underwriter, becoming bankrupt shall be entitled to prove  
any loss to which such bankrupt shall be liable in respect  
of such subscription, although the person so effecting such  
policy was not beneficially interested in such ships or goods,  
in case the person or persons so interested is not or are not  
within the united realm (b).—[Arch. B. L. 105, 107.]

Persons effect-  
ing insurance  
admitted to  
prove loss.

Annuity credi-  
tor admitted  
to prove.

LIV. And be it enacted, That any annuity creditor of  
any bankrupt, by whatever assurance the same be secured,  
and whether there were or not any arrears of such annuity  
due at the bankruptcy, shall be entitled to prove for the  
value of such annuity, which value the commissioners  
shall ascertain (c), *regard being had to the original price  
given for the said annuity, deducting therefrom such diminu-  
tion in the value thereof as shall have been caused by the lapse  
of time since the grant thereof to the date of the commission.*  
—[Arch. B. L. 88.]

Sureties for  
payment of  
annuities  
granted by  
bankrupt, in

LV. And be it enacted, That it shall not be lawful for any  
person entitled to any annuity granted by any bankrupt, to sue  
any person who may be collateral surety for the payment of such  
annuity, until such annuitant shall have proved under the

(a) 19 Geo. 2, c. 32, s. 2.

(b) 49 Geo. 3, c. 121, s. 16.

(c) Ibid. s. 17.

commission against such bankrupt for the value of such annuity, and for the "payment" (a) thereof; and if such surety after such proof pay the amount proved as aforesaid, he shall be thereby discharged from all claims in respect of such annuity; and if such surety shall not (before any payment of the said annuity subsequent to the bankruptcy shall have become due) pay the sum so proved as aforesaid, he may be sued for the accruing payments of such annuity, until such annuitant shall have [been] paid or satisfied the amount so proved, with interest thereon at the rate of four per cent. per annum, from the time of notice of such proof, and of the amount thereof being given to such surety; and after such payment or satisfaction, such surety shall stand in the place of such annuitant in respect of such proof as aforesaid, to the amount so paid or satisfied as aforesaid by such surety; and the certificate of the bankrupt shall be a discharge to him from all claims of such annuitant, or of such surety in respect of such annuity; provided that such surety shall be entitled to credit in account with such annuitant for any dividends received by such annuitant under the commission, before such surety shall have fully paid or satisfied the amount so proved as aforesaid.—[Arch. B. L. 98.]

what manner  
to come in  
under the  
commission;

LVI. And be it enacted, That if any bankrupt shall, before the issuing of the commission, have contracted any debt payable upon a contingency which shall not have happened before the issuing of such commission, the person with whom such debt has been contracted may, if he think fit, apply to the commissioners to set a value upon such debt, and the commissioners are hereby required to ascertain the value thereof, and to admit such person to prove the amount so ascertained, and to receive dividends thereon; or if such value shall not be so ascertained before the contingency shall have happened, then such person may, after such contingency shall have happened, prove in respect of such debt, and receive dividend with the other creditors, not disturbing any former dividends, provided such person had not, when such debt was contracted, notice of any act of bankruptcy by such bankrupt committed.—[Arch. B. L. 90.]

Debts contin-  
gent at the  
time of the  
bankruptcy, to  
be proveable  
after the hap-  
pening of  
contingency.

LVII. And be it enacted, That in all future commissions against any person or persons liable upon any bill of exchange or promissory note, whereupon interest is not reserved, overdue at the issuing the commission, the holder of such bill of exchange or promissory note shall be entitled to prove for interest upon the same, to be calculated by the commissioners to the date of the commission, at such rate as is allowed by the court of King's Bench in actions upon such bills or notes.—[Arch. B. L. 83.]

Interest on  
promissory  
notes and bills  
of exchange  
proveable.

LVIII. And be it enacted, That if any plaintiff in any action at law or suit in equity, or petitioner in bankruptcy or lunacy, shall have obtained any judgment, decree, or order

Plaintiff ob-  
taining judg-  
ment, &c.,

(a) Should be "arrears."

entitled to  
prove for  
costs, &c.

against any person who shall thereafter become bankrupt for any debt or demand in respect of which such plaintiff or petitioner shall prove under the commission, such plaintiff or petitioner shall also be entitled to prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the "bankruptcy" (a).—[Mr. Archbold's remarks on this section, B. L. 84.]

Proving a debt  
under a com-  
mission to be  
an election not  
to proceed  
against the  
bankrupt by  
action.

LIX. And be it enacted, That no creditor who has brought any action, or instituted any suit against any bankrupt, in respect of a demand prior to the bankruptcy, or which might have been proved as a debt under the commission against such bankrupt, shall prove a debt under such commission, or have any claim entered upon the proceedings under such commission, without relinquishing such action or suit (b); and in case such bankrupt shall be in prison or custody at the suit of or detained by such creditor, he shall not prove or claim as aforesaid, without giving a sufficient authority in writing for the discharge of such bankrupt; and the proving or claiming a debt under a commission by any creditor, shall be deemed an election by such creditor to take the benefit of such commission, with respect to the debt so proved or claimed; provided that such creditor shall not be liable to the payment to such bankrupt, or his assignees, of the costs of such action or suit so relinquished by him; and that where any such creditor shall have brought any action or suit against such bankrupt, jointly with any other person or persons, his relinquishing such action or suit against the bankrupt, shall not affect such action or suit against such other

Creditor hav-  
ing elected to  
come in under  
the commis-  
sion, if it be  
afterwards  
superseded,  
restored to his  
former rights.

person or persons (c): provided also, that any creditor who shall have so elected to prove or claim as aforesaid, if the commission be afterwards superseded, may proceed in the action as if he had not so elected, and in bailable actions shall be at liberty to arrest the defendant de novo, if he has not put in bail below, or perfected bail above, or if the defendant has put in or perfected such bail, to have recourse against such bail, by requiring the bail below to put in and perfect bail above within the first eight days in term, after notice in the London Gazette of the superseding such commission, and by suing the bail upon their recognizance, if the condition thereof is broken. [Arch. B. L. 111, 130.]

Commission-  
ers may ex-  
punge proof of  
debts.

LX. And be it enacted, That whenever it shall appear to the assignees or to two or more creditors, who have each proved debts to the amount of twenty pounds or upwards, that any debt proved under the commission is not justly due either in whole or in part, such assignees or creditors may make representation thereof to the commissioners; and it shall be lawful

(a) Quære, "Time of the proof?"

(b) 49 Geo. 3, c. 121, s. 14.

(c) Ibid.

for the said commissioners to summon before them and examine upon oath any person who shall have so proved as aforesaid, together with any person whose evidence may appear to the commissioners to be material, either in support of or in opposition to any such debt; and if the said commissioners, upon the evidence given on both sides, or (if the person who shall have so proved as aforesaid shall not attend to be examined, having been first duly summoned, or notice having been left at his last place of abode) upon the evidence adduced by such assignees or creditors as aforesaid, shall be of opinion that such debt is not due either wholly or in part, the said commissioners shall be at liberty to expunge the same, either wholly or in part, from the proceedings: provided, that such assignees or creditors requiring such investigation shall, before it is instituted, sign an undertaking to be filed with the proceedings, to pay such costs as the commissioners shall adjudge to the creditor who has proved such debt as aforesaid, such costs to be recovered by petition: provided also, that such assignees or creditors may apply in the first instance by petition to the Lord Chancellor, or that either party may petition against the determination of the commissioners.—[Arch. B. L. 114; ii. 107.]

Persons requiring investigation to assign undertaking for costs.

Application by petition reserved.

LXI. And be it enacted, That at the second meeting appointed by the commissioners as aforesaid, or any adjournment thereof, assignees (a) of the bankrupt's estate and effects shall be chosen; and all creditors who have proved debts under the commission to the amount of ten pounds and upwards shall be entitled to vote in such choice; and also any person authorized by letter of attorney from any such creditor or creditors, upon proof of the execution thereof, either by affidavit sworn before a master in chancery, ordinary or extraordinary, or by oath before the commissioners *viva voce*, and in case of creditors residing out of England, by oath before a magistrate where the party shall be residing, duly attested by a notary public, British minister or consul, and the choice shall be made by the major part in value of the creditors so entitled to vote (b): provided that the commissioners shall have power to reject any person so chosen who shall appear to them unfit to be such assignee as aforesaid, and upon such rejection a new choice of another assignee or assignees shall be made as aforesaid.—[Arch. B. L. 116.]

Choice of assignees at second meeting.

How chosen.

Commissioners may reject any person chosen as unfit.

LXII. And be it enacted, That in all commissions against one or more of the partners of a firm, any creditor to whom the bankrupt or bankrupts is or are indebted, jointly with the other partner or partners of the said firm, or any of them, shall be entitled to prove his debt under such commission for the purpose only of voting in the choice of as-

Joint creditor entitled to prove under separate commission, for the purpose of voting in the

(a) One assignee may be chosen.—See sec. 135.

(b) 5 Geo. 2, c. 30, s. 26.



choice of assignees; not to receive dividend, unless petitioning creditor against one of the firm.

Commissioners to convey the personal estate to the assignees, and debts due to the bankrupt.

Commissioners to convey bankrupt's real estate to assignees.

signees under such commission, or of assenting to or dissenting from the certificate of such bankrupt or bankrupts, or of either of such purposes; but such creditor shall not receive any dividend out of the separate estate of the bankrupt or bankrupts until all the separate creditors shall have received the full amount of their respective debts (a), *unless such creditor shall be a petitioning creditor in a commission against one member of a firm.*—[Arch. B. L. 287, 290, 295.]

LXIII. And be it enacted, That the commissioners shall assign to the assignees, for the benefit of the creditors of the bankrupt, all the present and future personal estate of such bankrupt wheresoever the same may be found or known, and all property which he may purchase, or which may revert, descend, be devised or bequeathed, or come to him, before he shall have obtained his certificate; and the commissioners shall also assign as aforesaid all debts due or to be due to the bankrupt wheresoever the same may be found or known, and such assignment shall vest the property, right, and interest in such debts in such assignees, as fully as if the assurance whereby they are secured had been made to such assignees; and after such assignment, neither the bankrupt nor any person claiming through or under him shall have power to recover the same, nor to make any release or discharge thereof, neither shall the same be attached as the debt of the bankrupt by any person according to the custom of the city of London or otherwise, but such assignees shall have like remedy to recover the same in their own names as the bankrupt himself might have had if he had not been adjudged bankrupt. (b)—[Arch. B. L. 133, 134, 166.]

LXIV. And be it enacted, That the commissioners shall, by deed indented and enrolled in any of his majesty's courts of record, convey to the said assignees, for the benefit of the creditors as aforesaid, all lands, tenements, and hereditaments, *except copy or customaryhold, in England, Scotland, Ireland, or in any of the dominions, plantations, or colonies belonging to his majesty*, to which any bankrupt is entitled, and all interest to which such bankrupt is entitled in any of such lands, tenements, or hereditaments, and of which he might, according to the laws of the several countries *dominions, plantations, or colonies*, have disposed, and all such lands, tenements, and hereditaments, as he shall purchase, or shall descend, be devised, revert to, or come to such bankrupt before he shall have obtained his certificate, and all deeds, papers and writings respecting the same and every such deed shall be valid against the bankrupt, and against

(a) Instead of 3 Geo. 4, c. 31, 132, *post*, gives the power of recovering debts to the bankrupt s. 10.

(b) 1 Jac. 1. c. 15, s. 13. Sec. in cases of surplus.

all persons claiming under him (a): *Provided, that where* Proviso as to  
*according to the laws of any such plantation or colony, such* registration of  
*deed would require registration, enrolment, or recording the* conveyance of  
*same shall be so registered, enrolled, or recorded, according to* colonial pro-  
*the laws of such plantation or colony, and no such deed shall* perty.  
*invalidate the title of any purchaser for valuable consideration*  
*prior to such registration, enrolment, or recording, without*  
*notice that the commission has issued.*—[Arch. B. L. 124,  
 166.]

LXV. And be it enacted, That the commissioners shall, Commission-  
 by deed indented and enrolled as aforesaid, make sale for ers may make  
 the benefit of the creditors as aforesaid, of any lands, tene- sale of heredi-  
 ments and hereditaments, situate either in *England or Ireland*, whereof the  
 whereof the bankrupt is seised of any estate tail in posses- bankrupt is  
 sion, reversion, or remainder, and whereof no reversion or seized of any  
 remainder is in the crown, the gift or provision of the crown, estate tail, &c.  
 and every such deed shall be good against the said bankrupt  
 and the issue of his body, and against all persons claiming  
 under him, after he became bankrupt, and against all per-  
 sons whom the said bankrupt, by fine, common recovery, or  
 any other means might cut off or debar from any remainder,  
 reversion, or other interest, in or out of any of the said  
 lands, tenements, and hereditaments (b).—[Arch. B. L.  
 125, 166.]

LXVI. And be it enacted, that the Lord Chancellor Lord Chan-  
 may, upon petition, order any conveyance or assignment, cellor may va-  
 either of the real or personal estate of the bankrupt, made cate any con-  
 either to assignees appointed by the commissioners, or cho- veyance or as-  
 sen by the creditors, and any enrolment thereof, to be va- signment, and  
 cated, provided that no title of any purchaser under any direct new.  
 conveyance prior to such order be thereby affected, and that  
 no estate previously barred be thereby revived; and the  
 Lord Chancellor may order the commissioners to execute a  
 new assignment or assignments of the debts and effects un-  
 received and not disposed of by the then assignee or assign-  
 ees to any other person or persons to be chosen by the cre-  
 ditors as aforesaid, or to execute a new conveyance of the  
 real estate unsold, or not conveyed to such person or per-  
 sons, and in such manner as the Lord Chancellor shall  
 direct; and if such new assignment shall be ordered, the Order for new  
 debts and personal estate of the bankrupt shall be thereby assignment to  
 vested in such new assignees, and it shall be lawful for them vest the per-  
 to sue for the same (c), and to discharge any action or suit, the new as-  
 or to give any acquittance for such debts, as effectually as signees.

(a) 13 Eliz. c. 7. s. 11.

(b) 21 Jac. 1, c. 19, s. 12.

(c) If a debtor to a bankrupt's estate, when applied to, says, "I will call and pay the money," such promise is an admission of the right of the assignee, and

renders it unnecessary, in an action for the money, to give the usual proofs in support of the commission. *Pope v. Monk*, 2 Carr. and Payne's N. P. R. 112. See id. 301; & 2 Dow. & Ryl. 310.

New conveyance of real estate valid, without any conveyance from the former assignees.

Suits not to be abated by death or removal of assignees.

Commissioners may make sale of copyhold lands for the benefit of creditors.

Vendees of copyhold lands shall compound with the lord for their fines.

the former assignees might have done ; and the commissioners shall, in the two *London Gazettes* next after the removal of such assignee or assignees, and such new appointment as aforesaid, cause advertisements to be inserted giving notice of such removal and appointment, and directing persons indebted to the bankrupt's estate not to pay any debt to the assignee or assignees so removed ; and if such new conveyance as aforesaid shall be ordered as aforesaid, it shall be valid without any conveyance from any former assignee or assignees, or his or their heirs or assigns, provided that the order so made for vacating any bargain and sale be enrolled ; and any bargain and sale to be executed in pursuance thereof shall be enrolled in the same court as the first bargain and sale of the same estate was enrolled. (a). [Arch. B. L. 119, 122.]

LXVII. *And be it enacted, That whenever an assignee shall die, or a new assignee or assignees shall be chosen as aforesaid, no action at law or suit in equity shall be thereby abated, but the court in which any action or suit is depending may, upon the suggestion of such death or removal and new choice, allow the name of the surviving or new assignee (b) or assignees to be substituted in the place of the former ; and such action or suit shall be prosecuted in the name or names of the said surviving or new assignee or assignees, in the same manner as if he or they had originally commenced the same.*—[Arch. B. L. 272.]

LXVIII. *And be it enacted, That the commissioners shall have power, by deed indented and enrolled in any of his majesty's courts of record, to make sale, for the benefit of the creditors, of any copyhold or customaryhold lands, or of any interest to which any bankrupt is entitled therein, and thereby to entitle or authorise any person or persons on their behalf to surrender the same for the purpose of any purchaser or purchasers being admitted thereto.*---[Arch. B. L. 126.]

LXIX. *And be it enacted, That every person, to whom any sale of copyhold or customary lands or tenements shall be made by the commissioners, shall, before he enter into or take any profit of the same, agree and compound with the lords of the manors of whom the same shall be holden, for fines, dues, and other services as theretofore have been usually paid for the same, and thereupon the said lords shall, at the next or any subsequent court to be holden for the said manors, grant unto such vendee, upon request, the said copy or customary lands or tenements for such estate or interest as shall have been so sold to him as aforesaid, reserving the ancient rents, customs, and services, and shall admit him tenant of the same (c).* [Arch. B. L. 126.]

(a) 5 Geo. 2, c. 30, s. 66 ; and 3 Geo. 4, c. 81, s. 5.

(b) This is the only case where one assignee is empowered to

act under this statute, except where only one has been chosen.

(c) 13 Eliz. c. 7, s. 3.

LXX. And be it enacted, That if any bankrupt shall have granted, conveyed, assured, or pledged any real or personal estate, or deposited any deeds, such grant, conveyance, assurance, pledge, or deposit being upon condition or power of redemption at a future day, by payment of money or otherwise, the assignees may, before the time of the performance of such condition; make tender or payment of money, or other performance, according to such condition, as fully as the bankrupt might have done, and after such tender, payment, or performance, may sell and dispose of such real or personal estate for the benefit of the creditors as aforesaid (a).

Conditional estates granted by the bankrupt may be redeemed.

---[Arch. B. L. 129.]

LXXI. And be it enacted, That if any real or personal estate or debts of any bankrupt be extended after he shall have become bankrupt, by any person, under pretence of his being an accountant of or debtor to the king, the commissioners may examine upon oath, whether the said debt was due to such debtor or accountant upon any contract originally made between such accountant and the bankrupt, and if such contract was originally made with any other person than the said debtor or accountant, or in trust for any other person or persons, the commissioners may sell and dispose of such real and personal estate or debts for the benefit of the creditors under the commission, and such sale shall be valid against the said extent, and all persons claiming under it; and any person to whom the said real and personal estate or debts shall be bargained, sold, granted, or assigned by the commissioners, shall have and may recover the same against any person who shall detain the same (b).---[Arch. B. L. 174.]

Commissioners may proceed, when the bankrupt by fraud makes himself accountant to the king.

LXXII. And be it enacted, That if any bankrupt, at the time he becomes bankrupt, shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition any goods or chattels, whereof he was reputed owner (c), or whereof he had taken upon him the sale, alteration, or disposition as owner, the commissioners shall have power to sell and dispose of the same for the benefit of the creditors under the commission (d): *provided that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt or debts, either by way of mortgage or assignment, duly registered according to the provisions of an act of parliament made in the fourth year of his present majesty, intituled, An Act for the registering of Vessels.*—[Arch. B. L. 137.]

Goods in the possession, order, or disposition of the bankrupt, may be assigned by the commissioners.

Proviso for assignments of vessels under 4 G. 4, c. 41.

LXXIII. And be it enacted, That if any bankrupt, being Bankrupt

(a) 21 Jac. 1. c. 19, s. 13.

(b) 21 Jac. 1. c. 19, s. 10.

(c) See 5 Dowl. & Ry1. 240.

(d) 21 Jac. 1. c. 19, s. 11.

conveying his lands or goods to others, or delivering securities or transferring debts into other names, void.

Distress not to be available for more than one year's rent due; the landlord to prove for the residue.

Bankrupts entitled to leases, or agreements for leases, when not liable for rent or covenants.

If assignees decline to determine whether they will accept the lease, the lessor may petition.

at the time insolvent, shall (upon the marriage of any of his children, or for some valuable consideration), have conveyed, assigned, or transferred to any of his children, or any other person, any hereditaments, offices, fees, annuities, leases, goods, or chattels, or have delivered or made over to any such person any bills, bonds, notes, or other securities, or have transferred his debts to any other person or persons, or into any other person's name, the commissioners shall have power to sell and dispose of the same as aforesaid; and every such sale shall be valid against the bankrupt, and such children and persons as aforesaid, and against all persons claiming under him (a).—[Arch. B. L. 160.]

LXXIV. And be it enacted, That no distress for rent made and levied after an act of bankruptcy upon the goods or effects of any bankrupt (whether before or after the issuing of the commission), shall be available for more than one year's rent, accrued prior to the date of the commission (b), but the landlord or party to whom the rent shall be due, shall be allowed to come in as a creditor under the commission for the overplus of the rent due, and for which the distress shall not be available.—[Arch. B. L. 87.]

LXXV. And be it enacted, That any bankrupt entitled to any lease or agreement for a lease, if the assignees accept the same, shall not be liable to pay any rent accruing after the date of the commission, or to be sued in respect of any subsequent non-observance or non-performance of the conditions, covenants, or agreements therein contained; and if the assignees decline the same, shall not be liable as aforesaid, in case he deliver up such lease or agreement to the lessor or such person agreeing to grant a lease, within fourteen days after he shall have had notice that the assignees shall have declined as aforesaid; and if the assignees shall not (upon being thereto required) elect whether they will accept or decline such lease or agreement for a lease, the lessor or person so agreeing as aforesaid, or any person entitled under such lessor or person so agreeing shall be entitled to apply by petition to the Lord Chancellor, who may order them so to elect and to deliver up such lease or agreement, in case they shall decline the same, and the possession of the premises, or may make such other order therein as he shall think fit (c).—[Arch. B. L. 127.]

(a) 1 Jac. 1, c. 15, s. 5.

(b) But he cannot distrain and prove for the same rent. *Ex p. Grove*, 1 Atk. 103. If the tenant pay the rent to the landlord, who is about to distrain, even after an act of bankruptcy, the payment will be good, and cannot be impeached by the assignees. 5 Esp. 200.

(c) Similar to 49 Geo. 3, c. 121, s. 19, and was holden not to extend to a parol agreement for a lease. *Ex p. Sutton*, 2 Rose, 86; and to be confined to cases between lessor and lessee, or their respective assignees, and not to extend to cases between a lessee and his assignee of a lease. 3 B. & A. 521.

**LXXVI.** *And be it enacted, That if any bankrupt shall have entered into any agreement for the purchase of an estate or interest in land, the vendor thereof, or any person claiming under him, if the assignees of such bankrupt shall not (upon being thereto required) elect whether they will abide by and execute such agreement, or abandon the same, shall be entitled to apply by petition to the Lord Chancellor, who may thereupon order them to deliver up the said agreement, and the possession of the premises, to the vendor or person claiming under him, or may make such other order therein as he shall think fit.*—[Arch. B. L. 136.]

Vendor of any estate in lands may compel assignees to elect whether they will abide by or decline the agreement.

**LXXVII.** *And be it enacted, That all powers vested in any bankrupt which he might legally execute for his own benefit (except the right of nomination to any vacant ecclesiastical benefice) may be executed by the assignees for the benefit of the creditors, in such manner as the bankrupt might have executed the same (a).*—[Arch. B. L. 132.]

Assignees may execute powers previously vested in bankrupts.

**LXXVIII.** *And be it enacted, That it shall be lawful for the Lord Chancellor upon the petition of the assignees or of any purchaser from them, of any part of the bankrupt's estate, if such bankrupt shall not try the validity of the commission, or if there shall have been a verdict at law establishing its validity (b), to order the bankrupt to join in any conveyance of such estate, or any part thereof; and if he shall not execute such conveyance within the time directed by the order, such bankrupt and all persons claiming under him shall be stopped from objecting to the validity of such conveyance; and all estate, right, or title which such bankrupt had therein, shall be as effectually barred by such order as if such conveyance had been executed by him.*—[Arch. B. K. 178, 274.]

Lord Chancellor may order bankrupts to join in conveyances.

**LXXIX.** *And be it enacted, That if any bankrupt shall as trustee be seised, possessed of, or entitled to, either alone or jointly, any real or personal estate, or any interest secured upon or arising out of the same, or shall have standing in his name as trustee, either alone or jointly, any government stock, funds, or annuities, or any of the stock of any public company, either in England, Scotland, or Ireland, it shall be lawful for the Lord Chancellor, on the petition of the person or persons entitled in possession to the receipt of the rents, issues, and profits, dividends, interest, or produce thereof, on due notice given to all other persons (if any) interested therein, to order the assignees, and all persons whose act or consent thereto is necessary, to convey, assign, or transfer the said estate, interest, stock, funds, or annuities to such*

Where trustee becomes bankrupt the Chancellor may order conveyance or assignment to other trustees.

(a) 3 Geo. 4, c. 81, s. 3.

obtained his certificate."—See 3

(b) Instead of "at the time of the allowance of, or after he has

(Geo. 4, c. 31, s. 4.

person or persons as the Lord Chancellor shall think fit, upon the same trusts as the said *estate, interest, stock, funds, or annuities* were subject to before the bankruptcy, or such of them as shall be then subsisting and capable of taking effect; and also to receive and pay over the rents, issues, and profits, dividends, interest, or produce thereof, as the Lord Chancellor shall direct (a).—[Arch. B. L. 167.]

Where bankrupt beneficially entitled to stock.

LXXX. And be it enacted, That if any such bankrupt shall have any government stock, funds, or annuities, or any of the stock of any public company, either in England, Scotland or Ireland, standing in his name in his own right, it shall be lawful for the commissioners, by writing under their hands, to order all persons whose act or consent is thereto necessary, to transfer the same into the name of the assignees, and to pay all dividends upon the same to such assignees; and all such persons whose act or consent is so necessary as aforesaid are hereby indemnified for all things done or permitted pursuant to such order (b).—[Arch. B. L. 165.]

Conveyances, contracts, executions, and attachments, made or levied without notice, &c. two months before the commission, valid.

LXXXI. And be it enacted, That all conveyances by, and all contracts and other dealings and transactions by and with any bankrupt, *bonâ fide* made and entered into more than two calendar months before the date and issuing of the commission against him, and all executions and attachments against the lands and tenements or goods and chattels of such bankrupt, *bonâ fide* executed or levied more than two calendar months before the issuing of such commission, shall be valid, notwithstanding any prior act of bankruptcy by him committed; provided the person or persons so dealing with such bankrupt, or at whose suit or on whose account such execution and attachment shall have issued, had not at the time of such conveyance, contract, dealing, or transaction, or at the time of executing or levying such execution or attachment, notice of any prior act of bankruptcy by him committed (c): *provided also, that where a commission has been superseded, if any other commission shall issue against any person or persons comprised in such first commission, within two calendar months next after it shall have been superseded, no such conveyance, contract, dealing, or transaction, execution or attachment, shall be valid, unless made, entered into, executed, or levied more than two calendar months before issuing the first commission.*—[Arch. B. L. 172.]

Where a commission has issued within the two months which is afterwards superseded, the two months shall be reckoned from the issuing of it.

Payments made by and to bankrupt without notice, &c. va-

LXXXII. And be it enacted, That all payments really and *bonâ fide* made, or which shall hereafter be made by any bankrupt, or by any person on his behalf, before the date and issuing of the commission against such bankrupt, to any

(a) 36 Geo. 3, c. 90, s. 1.

(b) Id. s. 2 and 3.

(c) 46 Geo. 3, c. 135, s. 1; and 49 Geo. 3, c. 121, s. 2.

creditor of such bankrupt (such payment not being a fraudulent preference of such creditor), shall be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed; and all payments really and *bonâ fide* made, or which shall hereafter be made to any bankrupt before the date and issuing of the commission against such bankrupt, shall be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed; and such creditor shall not be liable to refund the same to the assignees of such bankrupt, provided the person so dealing with the said bankrupt had not, at the time of such payment by or to such bankrupt, notice of any act of bankruptcy by such bankrupt committed (a).—[Arch. B. L. 175.]

lid, notwithstanding act of bankruptcy.

LXXXIII. And be it enacted, That the issuing of a commission shall be deemed notice of a prior act of bankruptcy (if an act of bankruptcy had been actually committed before the issuing the commission) if the adjudication of the person or persons against whom such commission has issued shall have been notified in the London Gazette, and the person or persons to be affected by such notice may reasonably be presumed to have seen the same.—[Arch. B. L. 176.]

What shall be constructive notice.

LXXXIV. And be it enacted, That no person or body corporate, or public company, having in his or their possession or custody any money, goods, wares, merchandises, or effects belonging to any bankrupt, shall be endangered by reason of the payment or delivery thereof to the bankrupt or his order; provided such person or company had not, at the time of such delivery or payment, notice that such bankrupt had committed an act of bankruptcy (b).—[Arch. B. L. 175.]

Persons not to be endangered for delivery of goods without notice, &c.

LXXXV. And be it enacted, That if any accredited agent of any body corporate or public company shall have had notice of any act of bankruptcy, such body corporate or company shall be hereby deemed to have had such notice (c).—[Arch. B. L. 176.]

Bodies politic, &c. deemed to have notice if persons acting on their behalf had notice.

LXXXVI. And be it enacted, That no purchase from any bankrupt *bonâ fide* and for valuable consideration where the purchaser had notice at the time of such purchase of an act of bankruptcy by such bankrupt committed, shall be impeached by reason thereof, unless the commission against such bankrupt shall have been sued out within twelve calendar months (d) after such act of bankruptcy.—[Arch. B. L. 173.]

*Bonâ fide* purchases of bankrupts not to be impeached.

LXXXVII. And be it enacted, That no title to any real or personal estate sold under any commission, or under any order in bankruptcy, shall be impeached by the bankrupt, or any person claiming under him, in respect of any defect in the suing

Titles to property sold under commission not to be impeached un-

(a) 1 Jac. 1, c. 135, s. 1.—See 5 Dowl. & Ryl. 279, on the construction of this statute.

(b) 56 Geo. 3, c. 137, s. 1.

(c) 56 Geo. 3, c. 137, s. 2.

(d) 21 Jac. 1, c. 19, s. 14, "five years."



less proceedings to supersede commenced within twelve months.

Assignees, with consent of creditors, may compound or submit disputes to arbitration, or commence suits in equity.

Meetings of creditors to be attended by one-third in value.

Assignees of one or more members of a firm may use the names of partners in suits.

Partners whose names are so used in suits to be indemnified, and receive proceeds upon petition.

*out of the commission, or in any of the proceedings under the same, unless the bankrupt shall have commenced proceedings to supersede the said commission, and duly prosecuted the same, within twelve calendar months from the issuing thereof.—[Arch. B. L. 179, 230.]*

**LXXXVIII.** And be it enacted, That the assignees, with the consent of the major part in value of creditors, who shall have proved under the commission, present at any meeting, whereof and of the purport whereof twenty-one days notice shall have been given in the *London Gazette*, may compound with any debtor to the bankrupt's estate, and take any reasonable part of the debt in discharge of the whole, or may give time or take security for the payment of such debt, or may submit any dispute between such assignees and any persons, concerning any matter relating to such bankrupt's estate, to the determination of arbitrators to be chosen by the assignees and the major part in value of such creditors, and the party with whom they shall have such dispute, and the award of such arbitrators shall be binding on all the creditors; and the assignees are hereby indemnified for what they shall do according to the directions aforesaid, and no suit in equity shall be commenced by the assignees without such consent as aforesaid (a); *provided that if one third in value or upwards of such creditors shall not attend at any such meeting (whereof such notice shall have been given as aforesaid), the assignees shall have power, with the consent of the commissioners testified in writing under their hands, to do any of the matters aforesaid.—[Arch. B. L. 269.]*

**LXXXIX.** And be it enacted, That in any commission against any one or more member or members of a firm, the Lord Chancellor may, upon petition, authorise the assignees to commence or prosecute any action at law, or suit in equity, in the names of such assignees and of the remaining partner or partners, against any debtor of the partnership, and may obtain such judgment, decree, or order therein, as if such action or suit had been instituted with the consent of such partner or partners, and if such partner or partners shall execute any release of the debt or demand for which such action or suit is instituted, such release shall be void; provided that every such partner, if no benefit is claimed by him by virtue of the said proceedings, shall be indemnified against the payment of any costs in respect of such action or suit, and that it shall be lawful for the Lord Chancellor, upon the petition of such partner, to direct that he may receive so much of the proceeds of such action or suit as the Lord Chancellor shall think fit (b).—[Arch. B. L. 255, 269, 296.]

(a) 5 Geo. 3, c. 30, s. 34, 35.

(b) 3 Geo. 4, c. 81, s. 11.

XC. And be it enacted, That in any action by or against any assignee, or in any action against any commissioner or person acting under the warrant of the commissioners for any thing done as such commissioner, or under such warrant, no proof shall be required at the trial of the petitioning creditor's debt or debts (a), or of the trading or act or acts of bankruptcy, respectively, unless the other party in such action shall, if defendant, at or before pleading, and, if plaintiff, before issue joined, give notice in writing to such assignee, commissioner, or other person, that he intends to dispute some and which of such matters; and in case such notice shall have been given, if such assignee, commissioner, or other person shall prove the matter so disputed, or the other party admit the same, the judge before whom the cause shall be tried may (if he thinks fit) grant a certificate of such proof or admission; and such assignee, commissioner, or other person shall be entitled to the costs to be taxed by the proper officer occasioned by such notice, and such costs shall, if such assignee, commissioner, or other person shall obtain a verdict, shall be deducted from the costs which such other party would otherwise be entitled to receive from such assignee, commissioner, or other person (b).—[Arch. B. L. 12, 15, 57, 261, 267.]

In actions by or against any person acting under the commission, no proof required at the trial of petitioning creditor's debt, trading, or act of bankruptcy, unless notice be given that those matters are to be disputed.

XCI. And be it enacted, That in all suits in equity by or against the assignees, no proof shall be required at the hearing of the petitioning creditor's debt or debts, or of the trading or act or acts of bankruptcy respectively, as against any of the parties in such suit, except such parties as shall within ten day after rejoinder, give notice in writing to the assignees of his or their intention to dispute some and which of such matters; and where such notice shall have been given, if the assignees shall prove the matter so disputed, the costs occasioned by such notice to be taxed by the proper officer, shall, if the court see fit, be paid by the party or parties so giving such notice as aforesaid, and the service of such notice may be proved by affidavit upon hearing of the cause (c).—[Arch. B. L. 270.]

XCII. And be it enacted, That if the bankrupt shall not (if he was within the United Kingdom at the issuing of the commission) within two calendar months after the adjudication, or (if he was out of the United Kingdom) within twelve calendar months of the adjudication, have given notice of his intention to dispute the commission, (d) and have proceeded therein with

Depositions conclusive in actions or suits by assignees for any debt of the bankrupt, un-

(a) Notice of disputing an act of bankruptcy served on the clerk of the assignee, at his counting-house, is good service. *Widger v. Browning*, 2 Carr. & Payne, 523.

(b) 49 Geo. 3, c. 121, s. 10.

(c) Id. s. 11.

(d) If a person against whom a commission is sued out, take advantage of such commission, he is precluded from afterwards

less he dispute the commission, &c.

Proviso for debtor to the estate paying the debt into court when sued by the assignee within the time for bankrupt to dispute.

If the commission, afterwards superseded, persons from whom the assignees have recovered, or bonâ fide paying the assignees, &c. discharged from claims by the bankrupt.

Office for registering proceedings in bankruptcy.

*due diligence, the depositions taken before the commissioners at the time of or previous to the adjudication of the petitioning creditor's debt or debts, and of the trading and act or acts of bankruptcy, shall be conclusive evidence of the matters therein respectively contained, in all actions at law, or suits in equity, brought by the assignees for any debt or demand for which the bankrupt might have sustained any action or suit. (a).—[Arch. B. L. 260, 270.]*

**XCIII.** *And be it enacted, That if the assignees commence any action or suit for any money so due to the bankrupt before the time allowed as aforesaid for him to dispute the commission shall have elapsed, any defendant in any such action or suit shall be entitled, after notice given to the assignees to pay the same, or any part thereof, into the court in which such action or suit is brought, and all proceedings with respect to the money so paid into court shall thereupon be stayed, and after the time aforesaid shall have elapsed, the assignees shall have the same paid to them out of court.—[Arch. B. L. 258.]*

**XCIV.** *And be it enacted, That all persons from whom the assignees shall have recovered any real or personal estate either by judgment or decree, are hereby discharged, in case the commission be afterwards superseded, from all demands which may thereafter be made in respect of the same by the person or persons against whom such commission issued, and all persons claiming under him or them; and all persons who shall without action or suit bonâ fide deliver up possession of any real or personal estate to the assignees, or pay any debt claimed by them, are hereby discharged from all claim of any such person or persons as aforesaid in respect of the same, or any person claiming under him or them; provided such notice to try the validity of the commission had not been given, and been proceeded in within the time and in manner aforesaid.—[Arch. B. L. 267.]*

**XCV.** *And be it enacted, That all things done pursuant to the act passed in the fifth year of king George the second, and hereby repealed, whereby it was enacted, that the Lord Chancellor should appoint a place where all matters relating to commissions of bankruptcy should be entered of record, and should appoint a person to have the custody thereof, be hereby confirmed; and the Lord Chancellor shall be at liberty from time to time, by writing under his hand, to ap-*

disputing the validity of such commission at law, but may apply to the great seal. *Watson v. Wace*, 2 Carr. & Payne's N. R. 171.

(a) This section differs materially from a section on the same subject, 49 Geo. 3, c. 121, s. 16; there the depositions of the petitioning creditor's debt, &c. were

made evidence of these facts, unless notice were previously given, of an intention to dispute them; here if no such notice be given, the facts of there being a sufficient petitioning creditor's debt, trading, and act of bankruptcy, will be considered as admitted.

point a proper person, who shall by himself or his deputy to be approved by the said Lord Chancellor) enter of record all matters relating to commissions, and have the custody of the entries thereof; and the person so to be appointed, and his deputy, shall continue in their respective offices so long as they shall respectively behave themselves well, and shall not be removed, except by order in writing under the hand of the Lord Chancellor on sufficient cause therein specified (a).—[Arch. B. L. 3.]

**XCVI.** *And be it enacted, That in all commissions issued after this act shall have taken effect, no commission of bankruptcy adjudication of bankruptcy by the commissioners, or assignment of the personal estate of the bankrupt, or certificate of conformity, shall be received as evidence in any court of law or equity, unless the same shall have been first so entered of record as aforesaid; and the person so appointed to enter matters of record as aforesaid, shall be entitled to receive for such entry of every such commission, adjudication of bankruptcy, assignment, or order for vacating the same respectively, having the certificate of such entry indorsed thereon respectively, the fee of two shillings each, and for the entry of every certificate of conformity, having the like certificate endorsed thereon, six shillings; and every such instrument shall be so entered of record upon the application of, or on behalf of any party interested therein, and on payment of the several fees aforesaid, without any petition in writing presented for that purpose; and the Lord Chancellor may, upon petition, direct any depositions, proceedings, or other matter relating to commissions of bankruptcy, to be entered of record as aforesaid, and also appoint such fee and reward for the labour therein of the person so appointed as aforesaid, as the Lord Chancellor shall think reasonable; and all persons shall be at liberty to search for any of the matters so entered of record as aforesaid; provided that on the production in evidence of any instrument so directed to be entered of record, having the certificate thereon, purporting to be signed by the person so appointed to enter the same, or by his deputy, the same shall, without any proof of such signature, be received as evidence of such instrument having been so entered of record as aforesaid.*—[Arch. B. L. 240.]

No commission, adjudication, conveyance, or certificate to be received in evidence unless entered of record. What fees to be paid for entry.

Lord Chancellor may direct certain other matters to be entered.

Liberty to search.

Certificate of entry endorsed to be evidence of entry.

**XCVII.** *And be it enacted, That in every action, suit, or issue, office copies of any original instrument or writing, filed in the office or officially in the possession of the Lord Chancellor's secretary of bankrupts, shall be evidence to be received of every such original instrument or writing respectively; and if any such original instrument or writing shall be produced on any trial, the cost of producing the same shall not be allowed on taxation, unless it appears that the*

Office copies made evidence in certain cases.

Costs of producing original instrument

when not allowed.

production of such original instrument or other writing was necessary (a)—[Arch. B. L. 264, 270.]

Commissions, deeds, and other instruments relating to estates and effects of bankrupts, not liable to stamp duty.

**XCVIII.** *And be it further enacted, That after this act shall have come into effect all commissions of bankrupt, and also all deeds, conveyances, assignments, surrenders, admissions, and other assurances of or to, or relating solely to any freehold, leasehold, copyhold, or customary messuages, lunds, or tenements, or any mortgage, charge, or other incumbrance upon, or any estate, right, or interest of and in any messuages, lands, tenements, or personal estate, being the estate of or belonging to any bankrupt or bankrupts, or part or parcel thereof, and which after the execution of such deeds, conveyances, assignments, surrenders, or assurances respectively shall, either at law or in equity, be or remain the estate and property of such bankrupt or bankrupts, or the assignee or assignees appointed or chosen by virtue of the commission issued against him or them respectively, and also all powers of attorney, writs of supersedeas and procedendo, certificates of conformity, affidavits, and all other instruments and writings whatsoever relating solely to the estate or effects of any bankrupt or bankrupts, or any part thereof, or to any proceedings under any commission of bankrupt, and all advertisements inserted in the London Gazette relating solely to matters in bankruptcy, shall not be liable to any stamp duty or any other government duty whatsoever, and all sales of any real or personal estate of any bankrupt or bankrupts shall not be liable to any auction duty.*  
—[Arch. B. L. 18.]

Sales not liable to auction duty.

Punishment of perjury and false affirmation.

**XCIX.** *And be it enacted, That any bankrupt or other person who shall, in any examination before the commissioners, or in any affidavit or deposition authorised or directed by the present or any act hereby repealed, wilfully and corruptly swear falsely, being convicted thereof shall suffer the pains and penalties in force against wilful and corrupt perjury; and where any oath is hereby directed or required to be taken or administered, or affidavit to be made by or to any party, such party, if a Quaker, shall or may make solemn affirmation, and such Quaker shall incur such danger or penalty for refusing to make such solemn affirmation in such matters, when thereto required, as is hereby provided against persons refusing to be sworn; and all Quakers who shall, in any such affirmation, knowingly and wilfully affirm falsely, shall suffer the same penalties as are provided against persons guilty of wilful and corrupt perjury; and all persons before whom oaths or affidavits are hereby directed to be made are respectively empowered to administer the same, and also such solemn affirmation as aforesaid (b).—[Arch. B. L. 18.]*

Provision as to Quakers.

(a) 3 Geo. 4, c. 81, s. 7.

(b) 3 Geo. 4, c. 81, s. 6.

C. And be it enacted, That all sums of money forfeited under this act, or by virtue of any conviction for perjury committed in any oath hereby directed or authorized, may be sued for by the assignees in any of his majesty's courts of record; and the money so recovered (the charges of suit being deducted) shall be divided among the creditors (a).  
—[Arch. B. L. 166.]

Application of forfeitures.

CI. And be it enacted, That the assignees shall keep an account wherein they shall enter all property of the bankrupt received by them, and all payments made by them on account of the bankrupt's estate, which account every creditor who shall have proved may inspect at all seasonable times (b); and it shall be lawful for the commissioners, at all times, by writing under their hands, to summon the assignees before them, and require them to produce all books, papers, deeds, writings, and other documents relating to the bankruptcy, in their possession; and if such assignees so summoned shall not come before the commissioners at the time appointed (having no impediment made known to the commissioners, at the time of their meeting, and allowed by them), it shall be lawful for the said commissioners, by warrant under their hands and seals, directed to such person as they shall think fit, to cause such assignee to be brought before them; and upon their refusing to produce such books, deeds, writings, papers, or documents as aforesaid, it shall be lawful for the said commissioners to commit the party so refusing to such prison as they shall think fit, there to remain without bail, until such party shall submit himself to the said commissioners (c).—[Arch. B. L. 249.]

Assignees directed to keep a book of account of bankrupt's estate.

Commissioners may summon assignees, &c.

CII. And be it enacted, That at the meeting of creditors for the choice of assignees, the major part in value of such creditors there present may direct how, and with whom, and where the money received from time to time out of the estate shall be paid in and remain until it be divided; and if such creditors shall not make such direction as aforesaid, the commissioners shall, immediately after such choice, and at the same meeting, make such direction; but no money shall be directed to be paid into the hands of any of the commissioners, of the solicitor to the commission, or into any banking house, or other house of trade in which any such commissioner, assignee, or solicitor is interested. (d)  
—[Arch. B. L. 119.]

Creditors to direct where the money arising from the bankrupt's estate shall be paid in, &c.

CIII. And be it enacted, That the commissioners (e)

Commission-

(a) 13 Eliz. c. 7, s. 8; 1 Jac. 1, c. 15, s. 12.

(b) 5 Geo. 2, c. 30, s. 26.

(c) If upon the application of a creditor the commissioners refuse to compel the assignees to produce their accounts, the

court, upon petition, will order the assignees to do so. Buck, 304.

(d) 5 Geo. 2, c. 30, s. 31; and 49 Geo. 2, c. 131, s. 3.

(e) Omitting "upon the application of the assignees, or five or more creditors."

ers may direct such money to be invested in exchequer bills.

may, as often as it shall appear to them expedient for the bankrupt's estate, direct any money, part of such estate, to be invested in the purchase of exchequer bills, for the benefit of the creditors, and may direct where and with whom such exchequer bills shall be kept, and cause such exchequer bills to be sold when it shall appear to them expedient, and may direct the proceeds thereof to be again laid out in the purchase of exchequer bills, or to be applied for the benefit of the creditors, subject to the controul of the Lord Chancellor (a).—[Arch. B. L. 120.]

Assignee disobeying direction to pay or invest money, and retaining it, or permitting co-assignee to retain or employ it, to be charged with 20l. per cent.

CIV. And be it enacted, That if any assignee shall retain in his hands, or employ for his own benefit, or *knowingly permit any co-assignee so to retain or employ any sum to the amount of one hundred pounds or upwards, part of the estate of the bankrupt, or shall neglect to invest any money in the purchase of exchequer bills, when so directed as aforesaid,* every such assignee shall be liable to be charged in his accounts with such sum as shall be equal to interest at the rate of twenty per cent. on all such money, for the time during which he shall have so retained or employed the same, or permitted the same to be so retained or employed as aforesaid, or during which he shall have so neglected to invest the same in the purchase of exchequer bills, and the commissioners are hereby required to charge every such assignee in his accounts accordingly (b)—[Arch. B. L. 120.]

If assignee become bankrupt, having bankrupt's estate wilfully retained, his certificate shall not discharge his future effects in respect of it.

CV. And be it enacted, That if any assignee indebted to the estate of which he is such assignee, in respect of money so retained or employed by him as aforesaid, become bankrupt, if he shall obtain his certificate it shall only have the effect of freeing his person from arrest and imprisonment; but his future effects (his tools of trade, necessary household goods, and the necessary wearing apparel of himself, his wife and children excepted (shall remain liable for so much of his debts to the estate of which he was assignee, as shall not be paid by dividends under his commission, together with lawful interest for the whole debt (c).—[Arch. B. L. 209.]

Commissioners shall audit the accounts of the assignees not sooner than four months from the issuing, nor later than six months from the last examination.

CVI. And be it enacted, That the commissioners shall, at the meeting appointed for the last examination of the bankrupt, appoint a public meeting, not sooner than four calendar months from the issuing of the commission, nor later than six calendar months from the last examination of the bankrupt, whereof, and of the purport whereof, they shall give twenty-one days notice in the London Gazette, to audit the accounts of the assignees; and the assignees at such meeting shall deliver upon oath a true statement in writing of all money received by them respectively,

(a) 49 Geo. 3, c. 121, s. 7.

(b) Id. s. 4.

(c) 49 Geo. 3, c. 121, s. 6.

and when and on what account, and how the same have been employed; and the commissioners shall examine such statement, and compare the receipts with the payments, and ascertain what balances have been from time to time in the hands of such assignees respectively, and shall inquire whether any sum appearing to be in their hands ought to be retained; and it shall be lawful for the said commissioners to examine the said assignees upon oath, touching the truth of such accounts, and in such accounts the said assignees shall be allowed to retain all such money as they shall have expended in suing out and prosecuting such commission, and all other just allowances.—[Arch. B. L. 211.]

CVII. And be it enacted, That the commissioners shall, not sooner than four nor later than twelve calendar months from the issuing the commission, appoint a public meeting (whereof and of the purport whereof they shall give twenty-one days notice in the *London Gazette*), to make a dividend of the bankrupt's estate, at which meeting all creditors who have not proved their debts shall be entitled to prove the same; and the said commissioners at such meeting shall order such part of the net produce of the bankrupt's estate in the hands of the assignees, as they shall think fit, to be forthwith divided amongst such creditors as have proved debts under the commission, in proportion to their respective debts, and shall make an order for a dividend in writing under their hands, and shall cause one part of such order to be filed amongst the proceeding under the commission, and shall deliver another part thereof to the assignees, which order shall contain an account of the time and place of making such order, of the amount of the debts proved, of the money remaining in the hands of the assignees to be divided, of how much in the pound is then ordered to be paid to every creditor, and of the money allowed by the commissioners to be retained by the assignees, with their reason for allowing the same to be so retained; and the assignees, in pursuance of such order, (and without any deed of distribution made for that purpose), shall forthwith make such dividend, and shall take receipts in a book to be kept for that purpose, from each creditor, for the dividend received by such creditor; and such order and receipt shall be a discharge to every such assignee for so much as he shall pay pursuant to such order; and no dividend shall be declared unless the accounts of the assignees shall have been first so audited as aforesaid, and such statement delivered by them upon oath as aforesaid (a).—[Arch. B. L. 211.]

Method of making dividends.

No dividend without previous audit.

CVIII. And be it enacted, That no creditor having security for his debt, or having made any attachment in *London*, or any other place, by virtue of any custom there used, of

Creditors having securities for their debts,



not to receive more than other creditors.

the goods and chattels of the bankrupt, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect of any execution or extent served and levied, by seizure upon, or any mortgage of or lien upon any part of the property of such bankrupt before the bankruptcy (a); *provided that no creditor, though for a valuable consideration, who shall sue out execution upon any judgment obtained by default, confession, or nil dicit, shall avail himself of such execution to the prejudice of other fair creditors, but shall be paid rateable with such creditors.*—[Arch. B. L. 99.]

Final dividend within 18 months;

CIX. And be it enacted, That if the bankrupt's estate shall not have been wholly divided upon the first dividend, the commissioners, shall, within eighteen calendar months after the issuing of the commission, appoint a public meeting, (whereof and of the purport whereof they shall give twenty-one days notice in the *London Gazette*), to make a second dividend of the bankrupt's estate, when all creditors who have not proved their debts may prove the same; and the commissioners at such meeting, after taking such audit as hereinbefore directed, shall order the balance in the hands of the assignees to be forthwith divided amongst such of the creditors as shall have proved their debts; and such second dividend shall be final, unless an action at law or suit in equity be depending, or any part of the estate be standing out, not sold or disposed of, or unless some other estate or effects of the bankrupt shall afterwards come to the assignees; in which case they shall, as soon as may be, convert such estate and effects into money, and within two calendar months after the same shall be so converted, divide the same in manner aforesaid (b).—[Arch. B. L. 213.]

except where suit depending, or estate standing out, &c.

Assignees to file an account in the bankrupt office of unclaimed dividends remaining in their hands.

CX. And be it enacted, That if any assignee under any commission of bankrupt shall have, either in his own hands or at any bankers, or otherwise subject to his order or disposition, or to his knowledge in the hands of, or in the order and disposition of himself and any co-assignee or co-assignees or of any or either of them, any unclaimed dividend or dividends, amounting in the whole to the sum of fifty pounds, and shall not within six months after this act shall have taken effect, or two calendar months after the expiration of one year after the declaration and order of payment of such dividend or dividends made by the commissioners, either pay to the creditor or creditors entitled thereto, or cause a certificate thereof to be filed in the office of the Lord Chancellor's secretary of bankrupts, containing a full and true account of the name or names of the creditor or creditors to whom such unclaimed dividend or dividends is or are respectively due, and of the amount of such dividend or divi-

(a) 21 Jac. 1, c. 19, s. 9.

(b) 5 Geo. 2, c. 30, s. 37.

dividends respectively (such account being signed by the assignee or assignees rendering the same, and attested by the solicitor to the commission, or the solicitor to the assignee or assignees signing the same), such assignee or assignees shall be charged, in account with the estate of the bankrupt, interest upon such unclaimed dividend or dividends, to be computed from the time that such certificate is hereby directed to be filed, at the rate of five pounds per centum per annum, for such time as he shall thenceforth retain the same, and also such further sum as the commissioners shall think fit, not exceeding in the whole twenty pounds per centum per annum; and the Lord Chancellor, or the said commissioners, may order the investment of any unclaimed dividends in the public funds, or in any government security, for or on account of the creditors entitled, and subject to such order as the Lord Chancellor may think fit to make respecting the same, who, if he shall think fit, may, after the same shall have remained unclaimed for the space of three years from the declaration of such dividends by the commissioners, order the same to be divided amongst and paid to the other creditors, and the proof of the creditors to whom such dividends were allotted shall from thenceforth be considered as void as to the same, but renewable as to any future dividends, to place them *pari passu* with the other creditors, but not to disturb any dividends which shall have been previously made.—[Arch. B. L. 214.]

Penalty on assignees neglecting.

Power of investment of such dividends; and after three years, dividing the same among the other creditors.

CXI. And be it enacted, That no action for any dividend shall be brought against the assignees by any creditor who shall have proved under the commission, but if the assignees shall refuse to pay any such dividend, the Lord Chancellor may, on petition, order payment thereof, with interest for the time that it shall have been withheld, and the costs of the application (a).—[Arch. B. L. 214.]

No action to be brought for dividends, but the remedy to be by petition to the Lord Chancellor

CXII. And be it enacted, That if any person against whom any commission has been issued, or shall hereafter be issued, whereupon such person hath been or shall be declared bankrupt, shall not *before three of the clock upon the forty-second day after* notice thereof in writing to be left at the usual place of abode of such person, or personal notice in case such person be then in prison, and notice given in the *London Gazette* of the issuing of the commission, and of the meetings of the commissioners, surrender himself to them, and sign or subscribe such surrender, and submit to be examined before them, from time to time, upon oath, or being a Quaker, upon solemn affirmation; or if any such bankrupt upon such examination shall not discover all his real or personal estate, and how and to whom, upon what consi-

Bankrupt not surrendering and submitting to be examined:

or not making discovery of his estate and effects;

or not deliver-  
ing up his  
goods, books,  
&c. ;

or removing  
or embezzling  
to the value of  
10l. guilty of  
felony, &c.

Lord Chancel-  
lor may en-  
large the time  
for bankrupt  
surrendering  
himself.

Allowance to  
bankrupt for  
maintenance.

Bankrupt ap-  
prehended to

deration, and when he disposed of, assigned, or transferred any of such estate, and all books, papers, and writings relating thereunto (except such part as shall have been really and *bonâ fide* before sold or disposed in the way of his trade, or laid out in the ordinary expense of his family) ; or if any such bankrupt shall not upon such examination deliver up to the commissioners all such part of such estate, and all books, papers, and writings relating thereunto, as be in his possession, custody, or power, (except the necessary wearing apparel of himself, his wife and children (a) ; or if any such bankrupt shall remove, conceal, or embezzle any part of such estate, to the value of *ten pounds* (b) or upwards, or any books of account, papers or writings relating thereto, with intent to defraud his creditors, every such bankrupt shall be deemed guilty of felony, and be liable to be transported for life, or for such term, not less than seven years, as the court before which he shall be convicted shall adjudge, or shall be liable to be imprisoned only, or imprisoned and kept to hard labour in any common gaol, penitentiary house, or house of correction, for any term not exceeding seven years (c).---[Arch. B. L. 71, 133, 177, 179, 185, 193, 273, 274.]

CXIII. And be it enacted, that the Lord Chancellor shall have power, as often as *he shall think fit*, from time to time to enlarge the time for the bankrupt surrendering himself for such time as the Lord Chancellor shall think fit, so as every such order be made six days at least before the day on which such bankrupt was to surrender himself (d).---[Arch. B. L. 180.]

CXIV. And be it enacted, that it shall be lawful for the commissioners, before the choice of assignees, and after such choice for the assignees, with the approbation of the commissioners, testified in writing under their hands, from time to time to make such allowance to the bankrupt out of his estate, until he shall have passed his last examination, as shall be necessary for the support of himself and his family.---[Arch. B. L. 184.]

CXV. And be it enacted, That if any bankrupt apprehended by any warrant of the commissioners (e) shall, within

(a) A bankrupt is not bound to deliver up any of these matters.

(b) Twenty pounds by 5 Geo. 2, c. 30, s. 1.

(c) Similar to 5 Geo. 2. c. 30, s. 1, amended by 1 Geo. 4, c. 115, s. 1, where the whole of the forty-second day was given to the bankrupt to surrender, and proclamation must have been made requiring him to do so, before he incurred the penalty of the statute. The proclamation is now

unnecessary ; the notice or summons to the bankrupt being sufficient, and he must surrender himself to the commissioners before three o'clock in the afternoon of the forty-second day.

(d) By 5 Geo. 2, c. 30. s. 3, the Lord Chancellor could enlarge the time of the bankrupt surrendering himself but once, and then only for fifty days.

(e) 5 Geo. 2, c. 30. s. 14. " by judge's warrant's."

the time hereby allowed for him to surrender submit to be examined, and in all things conform, he shall have the same benefit as if he had voluntarily surrendered.—[Arch. B. L. 181.]

**CXVI.** And be it enacted, That the bankrupt, after the choice of assignees, shall (if thereto required) forthwith deliver up to them, upon oath, before a master, ordinary or extraordinary, in Chancery, or justice of the peace, all books of account, papers, and writings relating to his estate, in his custody or power, and discover such as are in the custody or power of any other person; and every such bankrupt, not in prison or custody, shall at all times after such surrender attend such assignees upon every reasonable notice in writing for that purpose given by them to him, or left at his house, and shall assist such assignees in making out the accounts of his estate; and such bankrupt, after he shall have surrendered, may, at all seasonable times before the expiration of the said forty-two days, or such farther time as shall be allowed to him to finish his examination, inspect his books, papers, and writings, in the presence of his assignees, or any person appointed by them, and bring with him each time any two persons (a) to assist him; and every such bankrupt, after he shall have obtained his certificate, shall upon demand in writing given to him, or left at his usual place of abode, attend the assignees, to settle any accounts between his estate and any debtor to or creditor thereof, or attend any court of record to give evidence touching the same, or do any act necessary for getting in the said estate, for which attendance he shall be paid five shillings per day by the assignees out of his estate; and if such bankrupt shall, after such demand as aforesaid, not attend, or on such attendance refuse to do any of the matters aforesaid, without sufficient cause shewn to the commissioners for such refusal, and by them allowed, the assignees making proof thereof upon oath before the commissioners, the said commissioners may, by warrant directed to such person as they shall think proper, cause such bankrupt to be apprehended and committed to such prison as they shall think fit, there to remain until he shall conform to the satisfaction of the said commissioners, or to the Lord Chancellor (b).—[Arch. B. L. 194, 273, 274.]

**CXVII.** And be it enacted, That the bankrupt shall be free from arrest or imprisonment by any creditor in coming to surrender; and after such surrender during the said forty-two days, and such further time as shall be allowed him for finishing his examination, provided he was not in custody at the time of such surrender; and if such bankrupt shall be

have the same benefit as if he had surrendered.

Bankrupt to deliver up his books of accounts to the assignees upon oath;

to attend assignees;

to be at liberty to inspect accounts;

after allowance of certificate to attend assignees in settling accounts.

Allowance for attendance.

Commitment for non-attendance.

To be free from arrest during examination, if not in custody.

If arrested.

(a) They may be different persons each time. See 5 Geo. 2. c. 30, s. 5.

(b) 5 Geo. 2, c. 30, s. 36.

to be discharged on producing summons.

Penalty on officer detaining bankrupt.

Commissioners may adjourn last examination of bankrupt *sine die*.

Bankrupt in custody to be brought before the commissioners at the creditors' expense.

Assignees may appoint persons to attend bankrupt in prison.

Penalty on persons concealing bankrupt's effects, 100l., &c.

arrested for debt, or on any escape warrant in coming to surrender, or shall after his surrender be so arrested within the time aforesaid, he shall, on producing the summons under the hands of the commissioners to the officer who shall arrest him, and giving such officer a copy thereof, be immediately discharged; and if any officer shall detain any such bankrupt after he shall have shown such summons to him, so signed as aforesaid, such officer shall forfeit to such bankrupt, for his own use, the sum of five pounds for every day he shall detain such bankrupt, to be recovered by action of debt in any court of record at *Westminster*, in the name of such bankrupt, with full costs of suit (a).—[Arch. B. L. 181.]

CXVIII. *And be it enacted, That it shall be lawful for the commissioners, at the time appointed for the last examination of the bankrupt, or any enlargement or adjournment thereof, to adjourn such examination sine die, and he shall be free from arrest or imprisonment for such time, not exceeding three calendar months, as they shall by indorsement upon such summons as aforesaid appoint, with like penalty upon any officer detaining such bankrupt after having been shown such summons.*—[Arch. B. L. 185.]

CXIX. *And be it enacted, That whenever any bankrupt is in prison, or in custody, under any process, attachment, execution, commitment, or sentence, the commissioners may, by warrant under their hands, directed to the person in whose custody such bankrupt is confined; cause such bankrupt to be brought before them at any meeting, either public or private (b); and if any such bankrupt is desirous to surrender, he shall be so brought up, and the expense thereof shall be paid out of his estate, and such person shall be indemnified by the warrant of the commissioners for bringing up such bankrupt; provided that the assignees may appoint any persons to attend such bankrupt from time to time, and to produce to him his books, papers, and writings, in order to prepare an abstract of his accounts, and a statement to shew the particulars of his estate and effects previous to his final examination and discovery thereof; a copy of which abstract and statement the said bankrupt shall deliver to them ten days at least before his last examination (c).*—[Arch. B. L. 181, 185.]

CXX. *And be it enacted, That any person wilfully concealing any real or personal estate of the bankrupt, and who shall not within forty-two days after the issuing of the commission discover such estate to one or more of the commissioners or assignees, shall forfeit the sum of one hundred*

(a) 5 Geo. 2. c. 30, s. 5. See (b) *Id.* s. 6; and 49 Geo. 3. 2 Dowl. and Ryl. 831. c. 120, s. 13, extended.

(c) 5 Geo. 2, c. 30, s. 6

punk, and double the value of the estate so concealed. And any person who shall, after the time allowed to the bankrupt to surrender, voluntarily discover to one or more of the commissioners or assignees any part of such bankrupt's estate, not before come to the knowledge of the assignees, shall be allowed five per centum thereupon, and such further reward as the major part in value of the creditors present at any meeting called for that purpose shall think fit, to be paid out of the estate recovered on such discovery (a).—[Arch. B. L. 176.]

Answer to  
persons mak-  
ing discovery  
thereof.

CXXI. And be it enacted, That every bankrupt who shall have duly surrendered, and in all things conformed himself to the laws in force concerning bankrupts at the time of issuing the commission against him, shall be discharged from all debts due by him when he became bankrupt, and from all claims and demands hereby made provable under the commission, in case he shall obtain a certificate of such conformity, as signed and allowed, and subject to such provisions as hereinafter directed (b); but no such certificate shall release or discharge any person who was partner with such bankrupt at the time of his bankruptcy, or who was then jointly bound, or had made any joint contract with such bankrupt (c).—[Arch. B. L. 206, 276, 296.]

Bankrupt dis-  
charged by  
certificate of  
conformity.

By discharge  
of bankrupt  
partner not  
discharged.

CXXII. And be it enacted, That such certificate shall be signed by four-fifths (d) in number and value of the creditors of the bankrupt, who shall have proved debts under the commission to the amount of twenty pounds or upwards, & after six calendar months from the last examination of the bankrupt, then either by three fifths in number and value of such creditors, or by nine-tenths in number of such creditors, who shall thereby testify their consent to the said bankrupt's discharge as aforesaid; and no such certificate shall be such discharge, unless the commissioners shall, in writing under their hands and seals, certify to the Lord Chancellor that such bankrupt has made a full discovery of his estate and effects, and in all things conformed as aforesaid, and that there does not appear any reason to doubt the truth or fulness of such discovery, and also that the creditors have agreed in manner hereby directed, and unless the bankrupt make oath in writing that such certificate and consent were obtained without fraud, and unless such certificate shall,

Certificate to  
be signed by  
four-fifths in  
number and  
value of credi-  
tors above 20*l*.

After six  
months, by  
three-fifths in  
number and  
value, or nine-  
tenths in  
number.

(a) 5 Geo. 2. c. 30, s. 20, 21.

(b) 5 Geo. 2. c. 30, s. 7; and 48 Geo. 3. c. 135, s. 4.

(c) 10 Anne, c. 14, s. 2.

(d) To find out what number is four-fifths, multiply the whole number of creditors by four, divide the product thereof by five, and the quotient will be the proper number. For three-fifths or

nine-tenths, multiply to the same way by three or nine, and divide by five or ten. It is the same with respect to value. In calculating the number of creditors who must sign out of the whole number who have proved, if there be a fraction, one for that fraction must sign.

Allowance by Lord Chancellor.

after such oath, be allowed by the Lord Chancellor, against which allowance any of the creditors of the bankrupt may be heard before the Lord Chancellor (*a*).—[Arch. B. L. 199, 202, 203, 206.]

Provision for petitions for the allowance of certificates presented under the 5 G. 4, c. 98.

CXXIII. *And be it enacted, That in all cases where any petition for the allowance of a certificate shall have been presented to the Lord Chancellor previous to the passing of this act, by virtue of the act passed in the fifth year of the reign of his present majesty, and hereby repealed, by any bankrupt whose certificate shall have been signed by the requisite number of creditors, with the exception of one whose signature is thereto necessary, and by the commissioners, it shall be lawful for the Lord Chancellor to allow any such certificate, and such certificate shall be a valid discharge as aforesaid, provided such petition shall have been duly served as in the said act required.*—[Arch. B. L. 199.]

Proof of signature of creditors.

CXXIV. *And be it enacted, That the commissioners shall not sign any certificate unless they shall have proof, by affidavit in writing, of the signature of the creditors thereto, or of any person thereto authorized by any creditor, and of the authority by which such person shall have so signed the same; and if any creditor reside abroad, the authority of such creditor shall be attested by a notary public, British minister, or consul; and every such affidavit, authority, and attestation shall be laid before the Lord Chancellor, with the certificate, previous to the allowance thereof* (*b*).—[Arch. B. L. 200, 204.]

Contracts and securities to induce creditors to sign, void.

CXXV. *And be it enacted, That any contract or security made or given by any bankrupt or other person unto or in trust for any creditor, or for securing the payment of any money due by such bankrupt at his bankruptcy, as a consideration or with intent to persuade such creditor to consent to or sign such certificate, shall be void, and the money thereby secured or agreed to be paid shall not be recoverable, and the party sued on such contract or security may plead the general issue, and give this act and the special matter in evidence* (*c*).—[Arch. B. L. 201.]

Bankrupt having obtained his certificate, free from arrest.

CXXVI. *And be it enacted, That any bankrupt who shall, after his certificate shall have been allowed, be arrested, or have any action brought against him for any debt, claim, or demand hereby made proveable under the commission against such bankrupt, shall be discharged upon common bail, and may plead in general that the cause of action accrued before he became bankrupt, and may give this act and the special matter in evidence, and such bankrupt's certificate, and the*

Certificate evidence of the proceed-

(*a*) 5 Geo. 2, c. 30, s. 10, and 49 Geo. 3, c. 135, s. 18.

(*b*) 5 Geo. 2, c. 30, s. 10, and 24 Geo. 2, c. 57, s. 10.

(*c*) 5 Geo. 2, c. 30, s. 11.

allowance thereof, shall be sufficient evidence (a) of the trading, bankruptcy, commission, and other proceedings precedent to the obtaining such certificate (b); and if any such bankrupt shall be taken in execution, or detained in prison for such debt, claim, or demand, where judgment has been obtained before the allowance of his certificate, it shall be lawful for any judge of the court wherein judgment has been so obtained, on such bankrupt's producing his certificate, to order any officer who shall have such bankrupt in custody by virtue of such execution, to discharge such bankrupt without exacting any fee, and such officer shall be hereby indemnified for so doing (c).—[Arch. B. L. 210, 278.]

CXXVII. And be it enacted, That if any person who shall have been so discharged by such certificate as aforesaid, or who shall have compounded with his creditors, or who shall have been discharged by any insolvent act, shall be or become bankrupt, and have obtained or shall hereafter obtain such certificate as aforesaid, unless his estate shall produce (after all charges) sufficient to pay every creditor under the commission fifteen shillings in the pound, such certificate shall only protect his person from arrest and imprisonment, but his future estate and effects (except his tools of trade and necessary household furniture, and the wearing apparel of himself, his wife and children), shall vest in the assignees under the said commission, who shall be entitled to seize the same in like manner as they might have seized property of which such a bankrupt was possessed at the issuing the commission (d).—[Arch. B. L. 208.]

CXXVIII. And be it enacted, That every bankrupt who shall have obtained his certificate, if the net produce of his estate shall pay the creditors who have proved under the commission ten shillings in the pound, shall be allowed five per cent. out of such produce, to be paid him by the assignees, provided such allowance (e) shall not exceed four hundred pounds; and every such bankrupt, if such produce shall pay such creditors twelve shillings and sixpence in the pound, shall be allowed and paid as aforesaid seven pounds ten shillings per cent., provided such allowance shall not exceed five hundred pounds; and every such bankrupt, if such produce shall pay such creditors fifteen shillings in the pound or upwards, shall be allowed and paid as aforesaid

ings under the commission. Bankrupt in execution may be ordered to be discharged.

Where bankrupt has been bankrupt before, or compounded or taken the benefit of the Insolvent Act, unless 15s. in the pound is paid, his future effects shall vest in the assignees, notwithstanding certificate.

Allowance to bankrupt, 5 per cent. and not exceeding 400l. if 10s. paid in the pound; seven and a half and not exceeding 500l. if 12s. 6d. 10 per cent. and not exceeding 600l. if 15s.; if under 10s. not exceeding

(a) The certificate must be first entered of record.

(b) 5 Geo. 2 c. 30, s. 7.

(c) Id. s. 7, 13, where provision is made for costs.

(d) 5 Geo. 2, c. 30, s. 9. See 5 Dowl. & Ry. 258.

(e) A bankrupt can have no allowance till after the final dividend. *Ex parte Styles and Pickart*.—1 Atk. 208.—Nor before certificate. *Ex parte Grier*, 1 Atk. 207.



3 per cent.  
and 300l.

Partner may  
receive allow-  
ance though  
the others are  
not entitled.

Bankrupt not  
entitled to  
certificate or  
allowance,  
and certificate  
obtained void,  
if he has lost  
20l. in one day,  
or 200l. within  
12 months ; or  
200l. by stock  
jobbing ;  
or destroyed  
books, &c. ;  
or made frau-  
dulent entries ;

or concealed  
property to  
the value of  
10l. ;  
or permitted  
fictitious debts  
to be proved.

Bankrupt not  
liable upon  
any promise  
to pay debt  
discharged by  
certificate,  
unless such  
promise be in  
writing.

ten pounds *per cent.*, provided such allowance shall not exceed six hundred pounds ; but if such produce shall not pay such creditors ten shillings in the pound, such bankrupt shall only be allowed and paid so much as the assignees and commissioners (a) shall think fit, not exceeding three pounds *per cent.* and (b) three hundred pounds.—[Arch. B. L. 275.]

CXXIX. And be it enacted, That in all joint commissions under which any partner shall have obtained his certificate, if a sufficient dividend shall have been paid upon the joint estate and upon the separate estate of such partner, he shall be entitled to his allowance, although his other partner or partners may not be entitled to any allowance (c).—[Arch. B. L. 297.]

CXXX. And be it enacted, That no bankrupt shall be entitled to his certificate, or to be paid any such allowance, and that any certificate, if obtained, shall be void, if such bankrupt shall have lost, by any sort of gaming or wagering, in one day twenty pounds, or within one year next preceding his bankruptcy two hundred pounds ; or if he shall, within one year next preceding his bankruptcy, have lost two hundred pounds by any contract for the purchase or sale of any government or other stock, where such contract was not to be performed within one week after the contract, or where the stock bought or sold was not actually transferred or delivered in pursuance of such contract ; or *shall, after an act of bankruptcy committed or in contemplation of bankruptcy, have destroyed, altered, mutilated, or falsified, or caused to be destroyed, altered, mutilated, or falsified, any of his books, papers, writings, or securities, or made or been privy to the making of any false or fraudulent entries in any book of account or other document, with intent to defraud his creditors, or shall have concealed property to the value of ten pounds or upwards ; or if any person having proved a false debt under the commission, such bankrupt being privy thereto or afterwards knowing the same, shall not have disclosed the same to his assignees within one month after such knowledge (d).*—[Arch. B. L. 204.]

CXXXI. And be it enacted, That no bankrupt after his certificate shall have been allowed under any present or future commission, shall be liable to pay or satisfy any debt, claim, or demand, from which he shall have been discharged by virtue of such certificate, or any part of such debt, claim, or demand, upon any contract, promise, or agreement, made or to be made after the suing out of the commission, unless such promise, contract, or agreement be made in writing, signed by the bank-

(a) How if the assignees and commissioners differ ? “ and ” instead of “ or.” 5 Geo. 3, c. 30, s. 8.

(b) Probably this is a misprint. (c) 3 Geo. 4, c. 81, s. 12.

(d) 5 Geo. 2, c. 30, s. 12.

rupt, or by some person thereto lawfully authorised, in writing by such bankrupt.—[Arch. B. L. 276.]

CXXXII. And be it enacted, That the assignees shall, upon request made to them by the bankrupt, declare to him how they have disposed of his real and personal estate, and pay the surplus, if any, to such bankrupt, his executors, administrators, or assigns; and every such bankrupt, after the creditors who have proved under the commission shall have been paid, shall be entitled to recover the remainder of the debts due to him (a); but the assignees shall not pay such surplus until all creditors who have proved under the commission shall have received interest upon their debts, to be calculated and paid at the rate and in the order following; (that is to say,) all creditors whose debts are now by law entitled to carry interest, in the event of a surplus, shall first receive interest on such debt at the rate of interest reserved or by law payable thereon, to be calculated from the date of the commission, and after such interest shall have been paid, all other creditors who have proved under the commission shall receive interest on their debts from the date of the commission, at the rate of four pounds per centum.—[Arch. B. L. 274.]

Assignees, in case of surplus, shall account and pay it to the bankrupt.

In case of a surplus all debts to carry interest.

CXXXIII. And be it enacted, That at any meeting of creditors after the bankrupt shall have passed his last examination, (whereof and of the purport of which twenty-one days notice shall have been given in the London Gazette,) if the bankrupt or his friends shall make an offer of composition, or security for such composition, which nine-tenths in number and value of the creditors assembled at such meeting shall agree to accept, another meeting for the purpose of deciding upon such offer shall be appointed, whereof such notice as aforesaid shall be given; and if at such second meeting nine-tenths in number and value of the creditors then present shall also agree to accept such offer, the Lord Chancellor shall and may, upon such acceptance being testified by them in writing, supersede the said commission.—[Arch. B. L. 203; ii. 146.]

Nine-tenths in number and value of creditors may accept a composition which shall bind the rest.

CXXXIV. And be it enacted, That in deciding upon such offer as aforesaid, any creditor whose debt is below twenty pounds shall not be reckoned in number, but the debt due to such creditor shall be computed in value; and that any creditor to the amount of fifty pounds and upwards, residing out of England, shall be personally served with a copy of the notice of the meeting to decide upon such offer as aforesaid, and of the purpose for which the same is called, so long before such meeting as that he may have time to vote thereat; and such creditor shall be entitled to vote by letter of attorney, executed and attested in manner hereby required for such creditors voting in the choice of assignees; and if any creditor shall

Mode of voting in deciding upon such composition.

(a) 13 Eliz. c. 7, s. 4.

agree to accept any gratuity or higher composition for assenting to such offer, he shall forfeit the debt due to him, together with such gratuity or composition; and the bankrupt shall (if thereto required) make oath before the commissioners that there has been no such transaction between him or any person with his privity, and any of the creditors, and that he has not used any undue means or influence with any of them to attain such assent as aforesaid (a)—[Arch. B. L. 224.]

Construction of the act.

CXXXV. And be it enacted, That this act shall be construed beneficially for creditors, (b), and that nothing herein contained shall alter the present practice in bankruptcy, except where any such alteration is expressly declared, and that it shall extend to aliens, denizens, and women, both to make them subject thereto, and to entitle them to all the benefits given thereby; and that all powers hereby given to, or duties directed to be performed by the Lord Chancellor, shall and may be exercised or performed by Lord Keeper of Lords Commissioners of the Great Seal; and all powers given to or duties directed to be performed by the commissioners or assignees may be exercised and shall be performed respectively by the major part of the commissioners, or by one assignee, where only one shall have been chosen; and that nothing herein contained shall render invalid any commission of bankruptcy now subsisting, or which shall be subsisting at the time this act shall take effect, or any proceedings which may have been had thereunder, or affect or lessen any right, claim, demand, or remedy which any person now has thereunder, or upon or against any bankrupt against whom any commission has or shall have issued, except as is herein specifically enacted; and that this act shall not extend either to Scotland or Ireland except where the same are expressly mentioned.—[Arch. B. L. 8, 22.]

Subsisting commissions declared valid

Act not to extend to Scotland or Ireland.

Commencement of act.

CXXXVI. And be it enacted, That this act shall not take effect before the first day of September, one thousand eight hundred and twenty-five; save and except that the repeal of the act passed in the fifth year of the reign of his present majesty, hereby repealed, and all enactments herein contained relating to certificates of conformity, shall take effect upon the passing of this act.

(a) The principle of this and the preceding section is taken from the Scotch Sequestration Act, 54 Geo. 3, c. 137, s. 59, 60, 61. See also Bell's Commentaries on the Laws of Scotland, vol. 2, p. 484. (b) 21 Jac. 1. c. 19, s. 1.

# THE BANKRUPT LAW.

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## INTRODUCTION.

SECT. I. *The Court of Commissioners of Bankrupt.*

II. *The Officers connected with Commissions of Bankrupt.*

III. *The Commissioners.*

IV. *The Messengers, &c.*

V. *The Solicitor to the Commission.*

VI. *Routine of the business in cases of Bankruptcy.*

VII. *The Authority of the Chancellor in cases of Bankruptcy.*

### SECTION I.

#### *The Court of Commissioners of Bankrupts.*

By stat. 1 and 2 Geo. 4. c. 115, all public meetings under commissions of bankrupt in London and all places within the bills of mortality, as well those fixed by the commissioners, as also all meetings of creditors under commissions which are held in pursuance of public advertisements, shall be holden within the building called "*The Court of Commissioners of Bankrupt,*" in Basinghall street, London, (s. 3, 17.), unless otherwise specially directed in writing by the major part of the commissioners named in the commission. s. 17. This statute of course extends to the public meetings merely; the previous meeting or meetings

for the purpose of opening the commission and declaring the party a bankrupt, are necessarily private meetings, often requiring to be holden and managed with great secrecy, in order to prevent a secreting of property or other proceeding adverse to the general interest of the creditors; they are usually holden at Walker's Rooms in Quality Court, Chancery Lane, or at some coffee house in the vicinity of Guildhall, London.

But in country commissions, the private as well as public meetings take place usually at some inn or tavern in the town in which the commission is opened; unless where secrecy is particularly requisite, in which case the private meeting is often holden at the solicitor's office.

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## SECTION II.

### *The Officers connected with Commissions of Bankrupt.*

*The Bankrupt Office.]* The Bankrupt office, or office of the Secretary of bankrupts, (where the docket, in cases of bankruptcy, is struck, &c. as will be mentioned hereafter,) is situate in Quality Court, Chancery Lane, London; attendance from 10 till 3, and from 6 till 8 o'clock every day in the year, excepting Sundays, Christmas day, Good Friday, and days appointed by proclamation for general thanksgiving or fast; and no docket shall be struck, but within the hours now mentioned, nor any but the usual fees taken for transacting any business out of the said office hours or on any holiday.—*Ord. Eldon, 13th April, 1815.*

*Office of the Patentee for making out commissions of bankrupt.]* Patentee, Edward Lord Thurlow; office, No. 1, Cursitor Street, Chancery Lane, London; attendance from 10 till 3, and from 6 till 8.

*The Registrar's Office.]* This office, which was established and is regulated by stat. 1 and 2 Geo. 4. c. 115, is situate in the Court of Commissioners of Bankrupt, in Basinghall Street, London; attendance from 10 till 4, and also during the sitting of any commission of bankrupt, or during the continuance of any meeting in bankruptcy holden in any part of the building, and during such other time as the Lord Chancellor shall from time to time direct. Sect. 11.

, The Registrar is appointed by the Lord Chancellor; and his

duties, as defined by the statute, are : to be in attendance in his office during the hours above mentioned ; to keep a daily journal, registry and account of meetings in bankruptcy which shall be holden in the said buildings or any office belonging to the same, in which shall be entered the name of the bankrupt, the solicitor to the commission, the messenger, the number of the list of commissioners to which the commission is directed, the names of the assignees, the hour of meeting, the time to which such meeting shall be adjourned, a minute of the nature or purpose for which such meeting was held, and the amount of any dividend declared thereat ; for which purpose the solicitor to the commission must furnish him with the necessary information in writing. Sect. 11. He must also keep a book, containing an entry or notice of all meetings appointed or called by public advertisement by the commissioners or creditors, which shall be open to the inspection of every person, during office hours, without fee. § 11. And he is to be paid for every meeting, ten shillings by way of charge for the use of the offices, (for which he is to account, in the manner directed by the act, § 11, 18.) and one shilling for himself ; and also one shilling for every search in the registry out of office hours, unless made by or by the order of the commissioners. § 16.

*Enrolment office.]* By stat. 6 Geo. 4. c. 16, § 95, authority is given to the Lord Chancellor to appoint a proper person, who by himself or deputy shall enter of record all matters relating to commissions, and have the custody of the entries thereof. And by sect. 96, in all commissions to be issued after this act shall have taken effect, no commission of bankruptcy, adjudication of bankruptcy by the commissioners, or assignment of the personal estate of the bankrupt, or certificate of conformity, shall be received in evidence in any court of law or equity, unless the same shall have been first so entered of record as aforesaid ; and which shall be so entered, and a certificate of such entry indorsed thereon, upon application by or on the behalf of any party interested therein, without petition in writing presented for that purpose, upon payment of certain fees in the act mentioned ; and upon production of such instrument afterwards in evidence, the certificate, so indorsed upon it, shall, without any proof of the signature thereto, be received as evidence of such instrument having been so entered of record. Also, by the same section, the Lord Chancellor may, upon petition, direct any depositions, proceedings, or other matter relating to commissions of bankrupt, to be entered of record as aforesaid, and appoint such fee for so doing as he may think reasonable.

The office for this purpose is in the Bankrupt office.

**SECTION III.**

***The Commissioners.***

The following are the Lists of the London Commissioners :

***1st List.***

William Gould, Esq., Sharphan Park, Bath.  
Hon. James Abercromby, 13, Lincoln's Inn Old Square.  
John Turner, Esq., 23, Nottingham Place.  
Sir George Francis Hampson, Bart., 19, Lincoln's Inn Old Square.  
John Beames, Esq., 5, Lincoln's Inn Old Square.

***2d List.***

John Mitford, Esq., Insolvent Office.  
Francis Charles Parry, Esq., 4, Onslow Terrace.  
Thomas Christopher Glynn, Esq., 24, Lincoln's Inn Old Square.  
Horace Twiss, Esq., 15, Serle Street, Lincoln's Inn Fields.  
Thomas Metcalfe, Gent., 5, Lincoln's Inn New Square.

***3d List.***

William Roberts, Esq., 2, Lincoln's Inn New Square.  
George Bankes, Esq., 5, King's Bench Walk, Temple.  
J. H. Merivale, Esq., 4, Lincoln's Inn Old Square.  
Hon. J. H. Abbott, Esq., Peck's Buildings, Temple.  
G. Richards, Esq., 8, Lincoln's Inn Old Square.

***4th List.***

Henry Revel Reynolds, Esq., 27, Charlotte Street.  
Robert Joseph Chambers, Esq., 9, Keppel Street, Russell Square.  
William Conant, Esq., 11, Portland Place.  
Richard Richards, Esq., Exchequer Office, Temple.  
Joseph Hickey, Gent., Sion Row, Twickenham, Surrey.

***5th List.***

John Reeves, Esq., 2, Parliament Place, Westminster.  
Richard Wilson, Esq., 47, Lincoln's Inn Fields.  
Thomas Hall Plomer, Examiner's Office.  
Francis Gregg, Esq., 48, Bedford Row.  
Anthony Hart Rawlinson, Esq., 3, Lincoln's Inn New Square.

*6th List.*

Robert Talbot, Esq., Stone Castle, near Dartford, Kent.  
Francis Vesey, Esq., 33, Brompton Row.  
John Samuel Martin Fonblanque, Esq., Boswell Court.  
George James Pennington, Esq., 6, King's Bench Walk, Temple.  
W. C. L. Keene, Esq., 5, Lincoln's Inn New Square.

*7th List.*

John Beauclerk, Esq., 19, Grosvenor Place.  
Jefferies Spranger, Esq., 2, Gray's Inn Square.  
Hon. Charles Ewin Law, 10, Farrar's Buildings.  
John Dynely, Esq., 1, Field Court, Gray's Inn.  
William Bond, Esq., 7, Fig Tree Court.

*8th List.*

William Wellfit, Esq., 21, Lincoln's Inn Old Square.  
John Pensam, Esq., Serjeant's Inn, Fleet Street.  
Nathaniel Clayton, Esq., 3, Lincoln's Inn New Square.  
William John Law, Esq., 74, Great Russell Street.  
E. Jacob, Esq., 21, Lincoln's Inn Old Square.

*9th List.*

James Trebeck, Esq., 30, Green Street, Grosvenor Square.  
John Samuel Hudson, Esq., Wimbledon.  
Edward Goulburn, Esq., 2, Brick Court, Temple.  
James Seton, Gent., 12, George Street, Adelphi.  
Edward Grose Smith, Gent., 7, Angel Court.

*10th List.*

Thomas Evance, Esq., Belmont House, Vauxhall.  
John Newland, Esq., 1, Lincoln's Inn New Square.  
Bryan Blundell Hollingshead, Esq., Gray's Inn Square.  
Thomas Farrer, Gent., 66, Lincoln's Inn Fields.  
Clement Tudway Swanston, Esq., 54, Chancery Lane.



*11th List.*

Peter Johnstone, Esq., 11, Somerset Street, Portman Square.  
 Henry Hall, Esq., 63, Lamb's Conduit Street.  
 Basil Montagu, Esq., 10, Lincoln's Inn New Square.  
 Thomas Meggison, Esq., Exchequer Office, Temple.  
 Nathaniel Ellison, Esq., 23, Lincoln's Inn Old Square.

*12th List.*

John Calthorpe Gough, Esq., 9, Lincoln's Inn New Square.  
 George Dale Collinson, Esq., 24, Lincoln's Inn Old Square.  
 John Lucius Dampier, Esq., 6, King's Bench Walk, Temple.  
 Charles Sinclair Cullen, Esq., 1, Cloisters, Temple.  
 Peter Still, Gent., 5, Lincoln's Inn New Square.

*13th List.*

George Daniel Harvey, Esq., Stanmore.  
 George Roots, Esq., 6, Lincoln's Inn Old Square.  
 Robert George Cecil Fane, Esq., 3, Stone Buildings.  
 Robert Belt, Esq., 76, Chaucery Lane.  
 W. B. Brent, Esq., 22, Lincoln's Inn Old Square.

*14th List.*

Archibald Elijah Impey, Esq., 6, Montague Place, Russell Square.  
 Montague Farrer Ainslie, Esq., Gray's Inn Square.  
 William Villiers Surtees, Esq., 40, Devonshire Place.  
 Robert Grant, Esq., 18, Lincoln's Inn Old Square.  
 Charles Bathurst, Esq., 8, Powis Place, Great Ormond Street.

*Tam Quam Commissioners.*

Thomas Evance, Esq., Belmont House, Vauxhall.  
 Henry Revel Reynolds, Esq., 27, Charlotte Street.  
 John Samuel Martin Fonblanque, Boswell Court.

These are nominated by the Lord Chancellor, to act as commissioners in London commissions, or, more correctly speaking, as persons to whom all London commissions must be directed,

for they derive their authority as commissioners solely from the commission in each case.

In country commissions, (which can only be when the bankrupt resides above 40 miles from London, 2 *Cooke* 2,) the solicitor suing out the commission nominates the commissioners. They must not be creditors of the intended bankrupt. *Ord. Eld.* 25 July, 1817. And two of them, at least, must be barristers residing at or near the place where such commission is to be executed; *Ord. Loughb.* 12 Aug. 1800; unless that be impracticable, as where there are no barristers within 20 miles of the place who would be willing to attend for the fees allowed by statute, in which case the commission may be directed to five attorneys; *Ord. Eld.* 15 Aug. 1821; and by *stat* 6 Geo. 4 c. 16. § 23; at every meeting under any commission to be executed in the country, wherein any one or more of the commissioners named may be a barrister or barristers, such barrister or barristers, or as many of them as shall be willing to attend, not exceeding three at each meeting, shall be the acting commissioner or commissioners, and shall be entitled to his or their summonses and fees accordingly, in priority to any of the other commissioners in the said commission named.

As to the authority of the commissioners to commit the bankrupt, or persons summoned to give evidence, &c. before them, and as to the authority given to the commissioners in other respect, *vide post passim*.

By *stat.* 1 and 2 Geo. 4. c. 115. § 21, the commissioners acting under any commission of bankrupt shall have full power and authority, and they are hereby empowered and authorised, to order and direct the messenger or messengers acting under their authority in any such commission, to take into custody any person or persons who shall commit or be guilty of any riot or disturbance, or who shall interrupt the said commissioners in the exercise of their duty, and to have such persons taken before any alderman or magistrate acting in the commission of the peace, to be dealt with according to law; and the warrant of such commissioners shall be a full authority and indemnity to such messenger or messengers in so doing. It may be doubtful, perhaps, whether country commissioners be included in this clause of the statute. *See the Act.*

It may be necessary to observe that a creditor of the bankrupt cannot be or act as a commissioner; *Ex p. Prosser*, 2 *Ross*, 370. *Ex p. Story*, *Buck*, 70; and where a creditor was, without his privity, named a commissioner, and had declined to act, but was afterwards chosen assignee, he was restrained from acting as assignee; *Ex p. Crundwell*, 2 *Mad.* 292; and upon all applications for commissions, requesting that the commissions may be di-

rected to commissioners therein named, the solicitor, in delivering to the secretary of bankrupts the names of the commissioners, must at the same time certify that, "according to the best of his knowledge and belief, none of the persons intended to be commissioners are or is in any manner creditors or a creditor of the intended bankrupt." *Ord. Eld.* 25 July, 1817. A commissioner also cannot be an assignee, *Ex p. Crundwell*, 2 *Mad.* 292; nor the solicitor under the commission. *Ex p. Wood*, *Sel. Ca. Ch.* 46.; nor can he purchase any of the bankrupt's property, either for himself or others; *Ex p. Bennett*, 10 *Ves.* 381; at least not without the assent of the majority of the creditors at a meeting called for that purpose. *Ex p. Harrison*, *Buck*, 17.

The commissioners must decide upon evidence given directly before them, and not upon affidavits merely stating the substance of evidence given in another court; *Ex p. Harcourt*, 2 *Rose*, 203; or the like, and should proceed on the commission submitted to them, without reference to any co-existing commission against the same bankrupt. *Ex p. Pryce*, 2 *Glyn and J.* 161. An appeal lies from their decision to the Lord Chancellor. *Ex p. Marler*, 1 *Atk.* 151. *Bromley v. Goodere*, *Id.* 77.

They may be removed for misconduct; *Ex p. Scarth*. 14 *Ves.* 204; that is to say, the Lord Chancellor may order a new commission to issue, (and at their expense, according to circumstances,) to be directed to other commissioners. 7 *Vin. Abr.* 77. *pl.* 3.

If two or more of the commissioners named in a commission die, the commission may be renewed; *Ex parte Hobbes*, *Buck*, 134. 6 *Geo.* 4. *c.* 16, § 26; upon which only half the usual fees shall be paid. 6 *Geo.* 4. *c.* 16, § 26. And the commissioners under the renewed commission, in such a case, commence from that stage of the proceedings where the former commissioners left off. *Buck*, 134.

By stat. 6 *Geo.* 4. *c.* 16, § 135, all powers given to, or duties directed to be performed by the commissioners, by this act, (as hereinafter fully detailed in the course of this work,) may be exercised or performed by the major part of the commissioners.

*Their oath.*] By stat. 6 *Geo.* 4. *c.* 16, § 21, no commissioners shall be capable of acting in the execution of any of the powers and authorities given by this act, (except the power hereby given of administering the oath next hereinafter mentioned,) until he shall have taken an oath in the presence of one or more of the said commissioners, to the effect following, that is to say:

"I, A. B. do swear, that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, ex-

"*execute the several powers and trusts reposed in me as a commissioner, in a commission of bankruptcy against —, and that without favour or affection, prejudice or malice. So help me God.*"

Which oath the commissioners are hereby empowered and required to administer one to another in the same commission named ; and they shall enter and keep a memorial or memorials thereof, (*see the form, ii. p. 7,*) signed by them respectively, among the proceedings under each commission.

*Their fees.]* Commissioners shall receive and be paid the fee of 20 shillings each commissioner for every meeting, and the like sum for every deed of conveyance executed by them, and for the signature of the bankrupt's certificate. 6 G. 4. c. 16, § 22. And when any commission shall be executed in the country, every commissioner, being a barrister at law, shall receive a further fee of 20 shillings for each meeting ; and in case his usual place of residence is distant seven miles or upwards from the place where such meetings are holden, and he shall travel such distance to any such meeting, he may receive a further sum of 20 shillings for every such meeting. *Id.* And any commissioner, who shall receive from the creditors, or out of the estate of the bankrupt, any further sum than as aforesaid, or who shall eat or drink at the charge of the creditors, or out of the estate of the said bankrupt, or order any such expense to be made, shall be disabled for ever from acting in such or any other commission. *Id.*

The fees to the commissioners are to be paid at the time of meeting by the solicitor to the commission ; and if not paid, such solicitor will, on petition, be ordered to pay them ; *Ex p. Griffith*, 1 *Mad.* 56, 2 *Rose*, 342 ; and (by 6 Geo. 4. c. 16, § 23) barristers named in a country commission, not exceeding three in number, shall have their fees in preference to other commissioners.

*Actions against them.]* If the commissioners act beyond the limit of their authority, and an injury thereby accrue to a party, he may maintain an action against them ; *Miller v. Seare*, 2 *W. Bl.* 1144, 2 *Str.* 880. *Perkin v. Proctor*, 2 *Wils.* 382. *R. v. Jekyl*, 1 *Vent.* 323, *Show.* 102. *Doswell v. Impey*, 1 *B. & C.* 163. 2 *D. & R.* 350 ; and see 4 *Inst.* 277. 1 *Salk.* 348 ; but where they act within the limit of that authority, although from a mistaken or erroneous judgment, they are not liable to an action. *Doswell v. Impey*, 1 *B. & C.* 168. 2 *D. & R.* 350. Nor are they liable where their commitment is bad, owing to

a mere informality in their warrant ; *Bray's case*, *Comb.* 391. or where the warrant works no actual injury to the party, as, for instance, where the party is already imprisoned on another account ; *Crowley v. Impey*, 2 *Stark.* 261 ; yet even in such a case, if by reason of the warrant he be confined to narrower bounds, as if he be deprived of the rules of the King's Bench or Fleet prisons, which he before enjoyed, it would be otherwise. *Id.* If, however, they be sued, merely by reason of the invalidity of the commission, or the like, they may afterwards sue the assignees for the amount of the costs, &c. incurred by them in defending the action. *Ex p. Linthwaite*, 16 *Ves.* 235.

By stat. 6 Geo. 4. c. 16, § 41, no writ shall be sued out against, nor copy of any process served on, any commissioner, for any thing by him done as such commissioner, unless notice in writing of such intended writ or process shall have been delivered to him, or left at his usual place of abode, by the attorney or agent for the party intending to sue or cause the same to be sued out or served, at least one calendar month before the suing out or serving the same : and such notice shall set forth the cause of action which such party has or claims to have against such commissioner ; and on the back of such notice shall be indorsed the name of such attorney or agent, together with the place of his abode, who shall receive no more than 20 shillings for preparing and serving such notice. The following may be the form of the notice :

“ To A. B., C. D., and E. F., esquires, commissioners named in a commission of bankrupt against [me, by the name and description of] Joseph Styles, late of —, in the county of —, builder, dealer and chapman.

“ Take notice, that I intend, at the expiration of one calendar month from the day of your being served with this notice, or as soon after as conveniently may be, to cause a writ of our Lord the King, called a [Latitat” or “ Capias ad respondendum,” or if in Middlesex in B. R. “ a precept called a Bill of Middlesex] to be sued out of his Majesty's Court of [King's Bench” or “ Common Pleas] against you and every of you, at my suit, in a plea of trespass, for that you, and each and every of you, as commissioners named in a commission of bankrupt against [me, by the name and description of] Joseph Styles, late of —, in the county of —, grocer, dealer and chapman, did, on or about the — day of —, 1825, cause [me to be wrongfully and illegally taken and imprisoned, and wrongfully and illegally to be kept and detained in prison for a long space of time,” so stating shortly the cause of action, which you intend to prove at the trial.] Dated the — day of —, 1825.

*Joseph Styles.*

\* \* To be written on plain paper, and indorsed "*G. H. of —, attorney [or agent] for the within named Joseph Styles.*" See 2 Arch. Pr. B. R. 150. Arch. Forms, 512.

And by § 42, no such plaintiff shall recover any verdict against such commissioner in any case where the action shall be grounded on any act of the defendant as commissioner, unless it be proved upon the trial of such action, that such notice was given as aforesaid; but in default thereof, such commissioner shall recover a verdict and costs; and no evidence shall be permitted to be given by the plaintiff on the trial of any such action, of any cause of action, except such as is contained in the notice.

Also, by § 43, every such commissioner may, at any time within one calendar month after such notice, tender amends to the party complaining, or to his agent or attorney; and if the same is not accepted, may plead such tender in bar to any action brought against him, grounded on such writ or process, together with the plea of Not Guilty, and any other plea with leave of the court; and if, upon issue joined thereon, the jury shall find the amends so tendered to have been sufficient, they shall give a verdict for the defendant; and if the plaintiff shall become nonsuit, or shall discontinue his action, or if judgment shall be given for such defendant upon demurrer, such commissioner shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only; and if upon issue so joined, the jury shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant on such other plea or pleas, they shall give a verdict for the plaintiff, and such damages as they shall think proper, which he shall recover, together with costs of suit: provided, that if any such commissioner shall neglect to tender any amends, or shall have tendered insufficient amends, before the action brought, he may, by leave of the court where such action shall depend, at any time before issue joined, pay into court such sum of money as he shall think fit; whereupon such proceedings shall be had in court, as in other actions where the defendant is allowed to pay money into court. See 2 Arch. Pr. B. R.

By § 44, every action brought against any person, for any thing done in pursuance of this act, shall be commenced within three calendar months next after the fact committed; and the defendant or defendants in such action may plead the general issue, and give this act and the special matter in evidence at the trial, and that the same was done by authority of this act; and if it shall appear so to have been done, or that such action was commenced after the time before limited for bringing the same,

the jury shall find for the defendant or defendants ; and if there be a verdict for the defendant or defendants, or if the plaintiff or plaintiffs shall be nonsuited, or discontinue his or their action or suit after appearance thereto, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs,—the defendant or defendants shall recover double costs.

The statute authorizes the commissioners in certain cases to commit the bankrupt and other persons examined before them, specifying in their warrant of commitment the questions such persons have refused to answer, or have not fully answered. *See* § 36, 37, 34, 33, 39, *of the statute, post*. But by § 40, in every action, in respect of any such commitment, brought by any bankrupt or other person so committed, the court or judge before which or whom such action is tried, shall, if thereto required by the defendant or defendants in such action, (in case the whole of the examination of the party so committed shall not have been stated in the warrant of commitment,) inspect and consider the whole of such examination ; and if upon such inspection and consideration it shall appear to such court or judge that the party was lawfully committed, the defendant or defendants in such action shall have the same benefit therefrom, as if the whole of such examination had been therein stated.

And lastly, by § 90, in any action by or against any assignee, or in any action against any commissioner or person acting under the warrant of the commissioners, for any thing done as such commissioner, or under such warrant, no proof shall be required at the trial, of the petitioning creditor's debt or debts, or of the trading, or act or acts of bankruptcy, respectively, unless the other party in such action shall, if defendant, at or before pleading, and, if plaintiff, before issue joined, give notice in writing to such assignee, commissioner, or other person, that he intends to dispute some and which of such matters ; and in case such notice shall have been given, if such assignee, commissioner, or other person, shall prove the matter so disputed, or the other party admit the same, the judge before whom the cause shall be tried, may, if he thinks fit, grant a certificate of such proof or admission ; and such assignee, commissioner, or other person, shall be entitled to the costs, to be taxed by the proper officer, occasioned by such notice ; and such costs shall, if such assignee, commissioner, or other person, shall obtain a verdict, be added to the costs ; and, if the other party shall obtain a verdict, shall be deducted from the costs, which such other party would otherwise be entitled to receive from such assignee, commissioner, or other person.

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SECTION IV.

*The Messengers, &c.*

The following is a List of the Messengers :

*Wm. Burwood, 33, Southampton Buildings.*  
*Charles Cutten, 6, Quality Court, Chancery Lane.*  
*Thos. Hamber, 16, Southampton Buildings.*  
*James Johnstone, 32, Southampton Buildings.*  
*John Trinder Nixon, 35, Southampton Buildings.*  
*Henry Page, 10, Quality Court, Chancery Lane.*  
*John Wright, 9, Quality Court, Chancery Lane.*

These are officers attendant upon the London commissioners only, and chosen and appointed in each particular case by the solicitor to the commission. Their several duties will be fully detailed in the course of the work ; and as to the payment of their bills, see post, title, "*Costs.*" Sec. 15.

In the case of a country commission, the solicitor makes choice of some person as messenger to the commission, to whom the commissioners direct their warrants, and who executes their summonses, &c.

The messenger is an officer of the court, and as such is amenable to the order of the court, in respect of his conduct under the commission. Therefore the court has jurisdiction to order the messenger to account to the assignees for property possessed by him under a former commission against the same bankrupts, which had been superseded.

*Actions against them.]* By stat. 6 Geo. 4. c. 16, (after giving certain power and authority as to the seizure of the bankrupt's property, to persons appointed for that purpose by the commissioners, by warrant under their hands and seals, as hereinafter more particularly mentioned,) it is enacted by sect. 31, that no action shall be brought against any person so appointed by the commissioners for any thing done in obedience to their warrant, prior to the choice of assignees, unless demand of the perusal and copy of such warrant hath been made or left at the usual place of abode of such person or persons, by the party or parties intending to bring such action, or by his or their attorney or agent, in writing, signed by the party or parties demanding the same, and unless the same hath been refused or neglected for six days after such demand ; and if after such demand and



compliance therewith, any action be brought against the person so appointed as aforesaid, without making the petitioning creditor or creditors defendant or defendants, if living, on producing and proving such warrant at the trial of such action, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the commissioners; and if such action be brought against the petitioning creditor or creditors, and the person so appointed as aforesaid, the jury shall, on proof of such warrant, give their verdict for the person so appointed as aforesaid, notwithstanding any such defect of jurisdiction as aforesaid; and if the verdict shall be given against the petitioning creditor or creditors, the plaintiff or plaintiffs shall recover his or their costs against him or them, to be taxed so as to include such costs as the plaintiff or plaintiffs are liable to pay to the person so appointed as aforesaid.

And by sect. 32. in every such action so brought as aforesaid against the petitioning creditor or creditors, either alone or jointly with the person so appointed by the commissioners as aforesaid, for any thing done in obedience to their warrant, proof by the plaintiff or plaintiffs in such action that the defendant or defendants, or any of them, are petitioning creditors, shall be sufficient for the purpose of making such defendant or defendants liable, in the same manner and to the same extent as if the act complained of in such action had been done or committed by such defendant or defendants.

The following may be the form of the demand of the perusal and copy of the warrant, above mentioned :

*To Mr. W. B.*

*Whereas on or about the — day of — 1825, you [seized and took possession of divers goods and chattels, the property of, and belonging to, Joseph Styles of — grocer, and kept and detained them in your possession from thence hitherto, and still keep and detain the same,” or as the case may have been,] “ under colour or pretence of some warrant or warrants of some commissioner or commissioners of bankrupt, authorizing you so to do. Now I do hereby, as the attorney for the said Joseph Styles, and on his behalf demand of you the perusal and copy of all and every warrant and warrants under and by virtue of which you [seized and took possession of the goods and chattels aforesaid, and detained and kept the same] as aforesaid. Dated the — day of — 1825.*

*G. H. of —, attorney [or agent] for  
the said Joseph Styles.*

Also, by sect. 90, we have seen [*ante*, p. 11, 12.] that in an action against a person acting under a warrant of the commissioners, for any thing done under such warrant, no proof shall be required at the trial, of the trading, petitioning creditor's debt or act of bankruptcy, unless notice of the party's intention to dispute the same be given in manner therein directed. *See the section.*

And lastly, by sect. 44, the action must be commenced within three calendar months after the fact committed; the defendant may plead the general issue, and give the special matter in evidence; and if the plaintiff fail, the defendant shall recover double costs. *See the section, ante*, p. 11.

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## SECTION V.

### *The Solicitor to the Commission.*

There is no statute, I believe, which requires that the person suing out a commission of bankrupt, should be an attorney, regularly admitted in any court; but there is no doubt that the Lord Chancellor, in the exercise of that control he possesses in those matters, would not suffer a commission to be sued out by any other person. However, it is not necessary that a person suing out a commission of bankrupt, should be a solicitor in chancery; if he be an attorney of a court of common law, it is sufficient. *Wilkinson v. Diggles*, 2 D. & R. 302, 1 B. & C. 158. *And see Ford v. Webb*, 3 B. & B. 241. He is appointed or removed by the majority of the assignees. *Ex p. Tomlinson*, 2 Rose, 66.

*His Disabilities and Liabilities.*] He cannot be a purchaser of any of the bankrupt's property either for himself or others, *Ex p. Bennett*, 10 Ves. 381; even after he ceases to be the solicitor to the commission, *Ex p. James*, 8 Ves. 337, at least without the consent of the parties interested. *Id.*

He is responsible for the commissioners' fees. *Ex p. Griffith*, 2 Rose, 342, 1 Mad. 56, and any creditor may petition against him in respect of property received by him under the commission. *Saxton v. Davis*, 18 Ves. 72, 1 Rose 79.

*How punished for misconduct.*] Where it appears that he has been guilty of fraud or collusion, or any irregularity has arisen from his gross ignorance or gross negligence, the Lord Chancellor, upon petition, will in general order him to pay the costs

of the motions or other proceedings arising from it, *see Ex p. Arrowsmith*, 14 *Ves.* 209. *Ex p. Conway*, 13, *Ves.* 62. *Ex p. Haywood*, 13 *Ves.* 67. and *see Ex p. Harding*, *Buck*, 24, 27; and in very gross cases may order him to be removed altogether, and another solicitor appointed. *See Ex p. Lowe*, 1 *Glyn & J.* 78.

*His Lien for Costs.*] The assignees are by law entitled to the custody of the proceedings under the commission; *see Ex p. Bullen*, 1 *Rose*, 134. *Ex p. Scarth*, 15 *Ves.* 293. *Ex p. Watson*, 1 *Cook*, 105. *Ex p. Newton*, 2 *Rose*, 19. *Ex p. Hardy*, 1 *Rose*, 395. And *see Ex p. Innes*, *Buck*, 337. Yet in practice the solicitor always has possession of them, but he has no lien upon them for his costs. *See Ex p. Shaw*, 1 *Glyn & J.* 124. He has a lien, indeed, upon all papers of the bankrupt, which came to his hands previously to the act of bankruptcy, for costs due to him from the bankrupt; 1 *Cook*, 423. and *see Lambert v. Buckmaster*, 2 *B. & C.* 616; 4 *D. & R.* 125; and he has this lien as fully against the assignees, as against the bankrupt himself; *Id.*; so has every attorney. *See Arch. Pr. B. R.* 38. But he has no lien upon papers come to his hands after the act of bankruptcy. *Ex p. Lee*, 2 *Ves.* 285. *See Ex p. Allison*, 1 *Glyn & J.* 210.

As to his remedy for costs, *see post*, *Sect.* 15.

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## SECTION VI.

### *Routine of the Business in Cases of Bankruptcy.*

The Solicitor appointed by the petitioning creditor for the purpose of suing out the commission, after having the affidavit of debt made, and the bond to the great seal executed, by his client, as hereinafter directed, lodges them in the office of the secretary of bankrupts, and the clerk then makes out the usual petition to the Lord Chancellor; and thereupon the commission is sealed and granted, as of course.

As soon as the solicitor obtains the commission, he gets his messenger to summon the commissioners, or, in country cases, the solicitor appoints with the commissioners the time and place of meeting. This is a private meeting, and sometimes holden with great secrecy, for reasons sufficiently obvious. At the time and place appointed, the commissioners meet, the commission is opened, the commissioners administer to each other the

oath required by statute, the petitioning creditor makes deposition as to his debt, witnesses are produced who make oath of the trading and act of bankruptcy, and the commissioners then adjudge the party a bankrupt. The commissioners then appoint the time and place for holding the first, second and third public meetings of the creditors, at which times the bankrupt is required to surrender, by an advertisement which the solicitor causes to be inserted for that purpose in the Gazette, and by a summons left for him at his usual place of abode, or served upon him in case he is in prison. The commissioners also issue their warrant, directed to the messenger and others, authorizing them to seize the property, books, &c. of the bankrupt; and which is done accordingly.

The first public meeting is appointed for the surrender of the bankrupt, and the proof of debts. If he surrender at this meeting, a memorandum to that effect is indorsed upon his summons, which has the effect of protecting him from arrest until after he has undergone his final examination. Such of the creditors who appear, prove their debts, by making depositions thereof. This is in general the only business done at this first public meeting.

The second public meeting is appointed for the choice of assignees, and for the proof of debts. If the bankrupt have not surrendered at the former meeting, he may surrender at this, and a memorandum thereof may be indorsed upon his summons, as above mentioned. Those of the creditors who attend, and who have not yet proved their debts, may now prove them. The creditors who have proved their debts to the amount of £10 and upwards, then chuse the assignees, and sign a memorandum thereof; and an acceptance of the trust is thereupon subscribed and signed by the assignees. The creditors at the same time name some banker, with whom the monies to be received by the assignees under the commission shall be lodged. And lastly, the solicitor's and messenger's bills of costs are presented to the commissioners, and taxed by them: and the commissioners give written orders to the assignees to pay the same out of the first monies or effects to be received under commission. This is usually the whole of the business done at the second public meeting.

The third public meeting is appointed for the final examination of the bankrupt, for the creditors to assent to or dissent from the allowance of his certificate, and for the proof of debts. If the bankrupt have not already surrendered, he must surrender before three o'clock in the afternoon of the 42d day from the day of his being declared bankrupt, (and which is the day always appointed for this third public meeting,) otherwise he will be

guilty of felony. The Lord Chancellor, however, may enlarge the time for his surrendering; or if he have surrendered, and submitted to be examined, the commissioners may, if they think fit, adjourn the examination to another day, and afterwards from day to day, until he shall have undergone the entire of his examination. The certificate, signed by the requisite number of creditors, may be laid before the commissioners for their signature, at this or at any future meeting, after the bankrupt has finished his final examination. The creditors may also prove their debts at this meeting.

There may be subsequent meetings for declaring dividends, and for other purposes, of which due notice must be given by advertisement in the Gazette.

Memorandums of the proceedings of the commissioners are made at each meeting, and signed by them. And these, together with the depositions of creditors, witnesses, &c. the examinations of the bankrupt and others, and copies of the Gazettes containing the advertisements, are tacked together, and kept by the solicitor to the commission.

*Oaths, Affirmations, &c.]* By stat. 6 Geo. 4. c. 16, s. 99, any bankrupt or other person who shall, in any examination before the commissioners, or in any affidavit or deposition authorized or directed by the present or any act thereby repealed, wilfully and corruptly swear falsely, being convicted thereof, shall suffer the pains and penalties in force against wilful and corrupt perjury; and where any oath is hereby directed or required to be taken or administered, or affidavit to be made by or to any party, such party, if a quaker, shall or may make solemn affirmation, and such quaker shall incur such danger or penalty for refusing to make such solemn affirmation in such matters, when thereto required, as is hereby provided against persons refusing to be sworn; and all quakers who shall, in any such affirmation, knowingly and wilfully affirm falsely, shall suffer the same penalties as are provided against persons guilty of wilful and corrupt perjury; and all persons before whom oaths or affidavits are hereby directed to be made, are respectively empowered to administer the same, and also such solemn affirmation as aforesaid.

*No Stamps or Auction Duty.]* By stat. 6 Geo. 4. c. 16, s. 98, after this act shall have come into effect, all commissions of bankrupt, and also all deeds, conveyances, assignments, surrenders, admissions, and other assurances of or to or relating

solely to any freehold, leasehold, copyhold, or customary messuages, lands, or tenements, or any mortgage, charge, or other incumbrance upon, or any estate, right, or interest of and in, any messuages, lands, tenements, or personal estate, being the estate of or belonging to any bankrupt or bankrupts, or part or parcel thereof, and which, after the execution of such deeds, conveyances, assignments, surrenders, or assurances respectively, shall, either at law or in equity, be or remain the estate and property of such bankrupt or bankrupts, or the assignee or assignees appointed or chosen by virtue of the commission issued against him or them respectively, and also all powers of attorney, writs of *Supersedeas* and *Procedendo*, certificates of conformity, affidavits, and all other instruments and writings whatsoever relating solely to the estate or effects of any bankrupt or bankrupts, or any part thereof, or to any proceedings under any commission of bankrupt, and all advertisements inserted in the London Gazette relating solely to matters in bankruptcy, shall not be liable to any stamp duty or any other government duty whatsoever, and all sales of any real or personal estate of any bankrupt or bankrupts, shall not be liable to any auction duty.

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## SECTION VII.

### *The Authority of the Lord Chancellor in cases of Bankruptcy.*

The Lord Chancellor has and exercises a discretionary superintending authority in cases of bankruptcy, as far as relates to the proceedings under the commission, to the bankrupt, the creditors, the assignees, the commissioner, the solicitor, the messenger, and all others concerned in suing out or proceeding upon a commission of bankrupt. *See Ex p. Cowan*, 3 B. & A. 123. And this jurisdiction is in some instances appellate, in others original.

He has a species of appellate jurisdiction from the decisions of the commissioners. *Ex p. Marler*, 1 Atk. 151. *Bramley v. Gooders*, *Id.* 77. If, for instance, the commissioners erroneously allow of a certain proof of debt, the Lord Chancellor, upon petition, may order it to be expunged; or if the commissioners

refuse to allow of the proof, the Lord Chancellor may order it to be allowed. So if the commissioner in any other respect, the remedy is by petition to the Lord Chancellor. He has no power, however, to compel the commissioners to declare a man a bankrupt, or to sign the bankrupt's certificate. *Buck*, 510. 11 *Ves.* 417. 13 *Id.* 181. 15 *Id.* 126. 7 *East*, 91. Yet in a recent case, where, of the five commissioners to whom the commission was directed, one was dead, and another out of the country, and one of the remaining three being of opinion, erroneously, that the petitioning creditor's debt was not sufficient to sustain the commission, the commissioners did not proceed to adjudication: the Lord Chancellor, on petition, ordered that the petitioning creditor should be at liberty to sue out another commission upon the same docket papers, to be directed to the list of commissioners next in rotation which was full. *Ex p. Stead*, 1 *Glyn and J.* 301. In aid of the authority of the commissioners, also, the Lord Chancellor will interfere, upon petition, in all cases where the commissioners really have authority, but their power of enforcing is defective. As, for instance, where the legislature has given authority to the commissioners, but has not given them power to punish disobedience to that authority, to make it available for its purpose, the Great Seal will lend the aid of its general jurisdiction to execute and enforce the provisions of the legislature. *Ex p. Woolley*, 1 *Glyn & J.* 395. But in cases where the statute has given no authority to the commissioners, the Court of Chancery cannot supply the defect. *Id.* A creditor proving his debt gives the Chancellor jurisdiction as to the debt, or dividends due in respect of such debt; *Ex p. Hilton*, 1 *Jac. & W.* 469. *Ex p. Timbrel*, *Buck.* 305; but an assignee cannot maintain a petition in bankruptcy against a party not claiming under the commission, though such party may, by petition against the assignees, claim property against the commission; *Ex p. Pease*, 19 *Ves.* 46. 1 *Rose*, 242; or petition to supersede it. *Post*, chap. 1. sec. 13.

The Lord Chancellor has also an original jurisdiction in many cases where the commissioners have none; as, for instance, in issuing the commission; in superseding it; in issuing a renewed commission; in amending the commission, &c.;—in enlarging the time for the bankrupt's surrender or final examination; in discharging the bankrupt out of custody, if his detaining creditor sue out the commission or prove upon the estate;—in staying or allowing the bankrupt's certificate; in ordering mortgaged property of the bankrupt to be sold; in ordering the proceedings under the commission or any part of them to be enrolled; in removing or discharging assignees, and ordering others to be

chosen in their stead ; in obliging the solicitor to the commission to deliver up the proceedings, &c. ;—or the like : in these and the like instances, the mode of proceeding is by petition to the Lord Chancellor. The Chancellor, also, upon a bankrupt petition, may send a case for the opinion of a court of law, or direct an issue to try litigated facts. *See Ex p. Cottrel, Cowp. 742. Ex p. Gulston, 1 Atk. 139.*

From the decision of the Lord Chancellor, in cases of bankruptcy, there is no appeal.

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includes not only brokers concerned in the purchase and sale of merchandize, but also stock brokers, *Cullen*, 18 ; and pawnbrokers, *Rawlinson v. Pearson*, 5 B. & A. 124 ; and even where a pawnbroker had ceased to take in pledges, but still continued to sell those that remained in his hands unredeemed, it was holden that he might be a bankrupt. *Id.* As to insurance brokers, see *Ex p. Stevens*, 4 Mad. 256.

*And persons using the trade or profession of a Scrivener, receiving other men's monies or estates into their trust or custody.]* A Scrivener was made subject to the bankrupt laws, and in the very words here used, by one of the repealed statutes, namely, stat. 21 Jac. 1. c. 19. s. 2 ; and the nature of the trade or profession of scrivener was, at the time of the making of that act, well understood. A scrivener then was a person to whom property was entrusted, for the purpose of lending it out to others at an interest payable to his principal, and for a commission or bonus to himself, whereby he sought to gain his livelihood. Therefore a man who had money of other persons in his possession, and who discounted bills with it for his own emolument only, was holden not to be a scrivener. *Harrison v. Harrison*, 1 Esp. 555. So, it has been holden that an attorney, purchasing and selling estates, negotiating loans, &c. for his clients, in the common course of his profession, and making only the regular professional charges for the conveyance, &c., was not a scrivener within the statute of James 1. above mentioned. *Ex p. Malkin*, 1 Rose, 406. 2 *Id.* 27, 28. *Re Lewis*, 2 Rose, 59. *Hurd v. Brydges*, 1 Holt, 654. But if money were usually lodged in the hands of an attorney by his clients and others, for the purpose of being invested in securities, and upon his so investing the money, he charged not only for the conveyances, but also a certain bonus or compensation for himself, and he were a conveyancer as well as an attorney, then it seems he would have been deemed a scrivener within the above statute. *Hutchinson v. Gascoigne*, 1 Holt, 507.

*And persons insuring Ships or their Freight, or other matters, against perils of the sea.]* Before this statute, an underwriter, as such, could not be a bankrupt. *Ex p. Bell*, 15 Ves. 355. As to insurance brokers, see *Ex p. Stevens*, 4 Mad. 256 ; they are clearly not within this clause of the statute.

*Warehousemen.]* This is a term well understood in the city of London, and means persons who buy and sell linens, muslins, silks and woollen goods, by wholesale ; and does not, it should seem, include in it every person who owns or keeps a warehouse,

and who is not otherwise a trader within the words or meaning of this statute.

*Wharfingers.*] This is also a term well understood in London, and means proprietors of waterside premises, who land, warehouse and ship goods, either foreign or coastwise, for reward.

*Packers.*] This is also a term well understood in London, and means persons employed by merchants, to receive, and in some instances to select, goods for them, from manufacturers, dyers, calenderers, &c., and pack the same, for exportation.

*Builders.*] These were not liable to be made bankrupt, previously to this statute. 5 *Esp.* 147. 2 *Campb.* 300.

*Carpenters.*] By this it should seem is meant such a person as purchases timber and other materials which he works up as a carpenter, and not a person who merely works at the trade. See 3 *Mod.* 155. 1 *Cook B. L.* 49.

*Shipwrights.*] These were holden to be subject to the bankrupt laws, previously to this statute; *L. Raym.* 741: not, it should seem, a person who merely works at the trade, but one who also purchases and furnishes the materials.

*Victuallers.*] Previously to this statute, being a victualler did not subject a man to the bankrupt laws, 4 *Bur.* 2064; unless he sold liquors out of the house to any person who sent for them. 1 *Rose*, 84.

*Keepers of inns, taverns, hotels, or coffee-houses.*] An innkeeper, before this statute, was not subject to the bankrupt laws, 3 *Lev.* 310. *Skin.* 291; unless he sold to any person out of the house who sent to purchase of him. 1 *T. R.* 572. 1 *Rose*, 84. And the same of coffee-house keepers. Hotel keepers, of course, were not within the former statutes.

*Dyers.*] It should rather seem that dyers, previously to this statute, were not subject to the bankrupt laws. See *Chr.* 46. *Mont.* 17. But see *Cooke*, 48.

*Printers.*] These have been now subjected to the bankrupt laws, for the first time.

*Bleachers.*] These also do not seem to have been liable to be made bankrupts, before this statute. See 1 *Mont.* 17.

*Fullers.*] These also were not subject to the bankrupt laws, previously to this statute.

*Calenderers.*] These also were not subject to the bankrupt laws, previously to this statute.

*Cattle or sheep salesmen.*] It has been doubted whether these were not rendered subject to the bankrupt laws, by stat. 5 Geo. 2. c. 30. s. 39. as coming within the meaning of the term "factor" in that statute. *See Willes*, 139. *Chr.* 579. It was thought proper, therefore, in the present statute, to put the matter out of doubt, by mentioning them specifically.

*And all persons using the trade of merchandize by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail.*] This needs no explanation. The trade of merchandize means merely the purchasing of articles of merchandize, for the purpose of selling them again at a profit. Upon the trade of buying and selling with a view to profit, we shall have occasion to make some observations presently.

*And all persons, who either for themselves, or as agents or factors for others, seek their living by buying and selling, or by buying and letting for hire, or by the workmanship of, goods or commodities.*] And this, although they cannot be classed under any particular denomination, in which case they may be called "dealer and chapman," (meaning a person who buys and sells mere personal goods, with a view to profit,)—a denomination, which, if supported by evidence, will support a commission, although coupled with one which of itself would not indicate a trader. *See Ex. p. Herbert*, 2 *Rose*, 248. *Hale v. Small*, 2 *Brod. & B.* 25.

In the repealed statute, 21 Jac. 1. c. 19. s. 2. the words are "All and every person and persons using or that shall use the trade of merchandize, by way of bargaining, exchange, bartering, chevisance, or otherwise, in gross or by retail, or seeking his or her living by buying and selling." The cases therefore which have been decided upon these words, "buying and selling," in the statute of James 1, will furnish us with the construction which should be given to the same words in the present statute.

First, then, as to buying and selling goods or commodities: it must be a buying *and* selling, or at least an intent to sell; for a buying alone, without an intent to sell, 1 *Com. Dig. Bankrupt A*, or a selling alone without a buying, *Id.*, will not constitute a trading within the meaning of this clause of the statute; and the buying must be a purchase in the common and ordinary,

and not merely in the legal acceptation of the term. *Per Lord Loughborough in Parker v. Wells Cooke*, 58. If a man purchase goods for his own use, that will not make him a trader within this branch of the statute, even although he afterwards sell such of them as he may not have occasion for; because he does not seek his living by the buying and selling. *See Dict. of Lord Mansfield in Parker v. Wells*, 1 T. R. 34. and see *Summersett v. Jarvis*, 3 Brod. & Bing. 2; 6 Moore, 56. On the other hand, if a man sell the produce of his land, even although he buy some other article to mix with it, in order to sell the produce so mixed to a greater advantage, it will not make him a trader within this clause of the present act. *Patten v. Brown*, 7 Taunt. 409. But otherwise, where the produce of the land is merely the raw material of a manufacture, and the manufacture is not the usual or necessary mode of enjoying the land. *Wells v. Parker*, 1 T. R. 34. S. C. 1 T. R. 783. If a man buy horses to sell again, with a view to profit, he is liable to be a bankrupt; *Ex parte Gibbs*, 2 Rose, 38. *Wright v. Bird*, 1 Price, 20; but if he sell only such as he bred and reared himself, he is not. If a butcher buy sheep or cattle, kill and sell them, with a view to profit, he is liable to be a bankrupt; *Dally v. Smith*, 4 Bur. 2148; but if he kill and sell only such as he bred and reared himself, he is not. If a fisherman be in the habit of purchasing fish from others to sell again, with a view to profit, he is liable to be a bankrupt; *Heannay v. Birch*, 3 Camp. 233; but if he sell only such fish as have been caught by him, he is not. Persons who purchase coals to sell again, with a view to profit, are liable to be made bankrupts; *Cooke*, 48, 73; but if they sell only such as they procure from their own mines, they are not. *Port v. Turton*, 2 Wils. 169, and see *ante*, p. 3. So, a person who owns or rents a mine, works it and sells the ore, &c. is not thereby subject to the bankrupt laws; for though he sells he does not buy; *Port v. Turton*, 2 Wils. 169; and the same of a person who sells stones taken from his own quarry. *Ex parte Gardner*, 1 Rose, 377, 1 V. & B. 45. So if a man make bricks from his own land, as a mode of enjoying the profits of it, even although he make the bricks entirely for sale, and purchase sand and fuel, &c. for the purpose of making them, he is not a trader within the meaning of the bankrupt laws; *Parker v. Wells, Cook*, 52—63. *Sutton v. Weely*, 7 East. 442; and this, whether he was a freeholder or termor merely; *Ex. p. Gallimore*, 2 Rose, 424; but if he bought the earth, as earth, by the load or otherwise, and manufactured it into bricks for the purpose of sale, that would render him liable to be a bankrupt, *Per Lord Loughborough in Parker v. Wells, supra. Cook*, 58. Therefore where a man made bricks for sale, of earth dug and taken from the waste, without the as-

sent of the lord, but afterwards paid to the lord a consideration for it, this was holden to be tantamount to a purchase of the earth, as earth, by license from the lord, and that consequently the party was a trader within the meaning of the bankrupt laws. *Ex p. Harrison*, 1 Bro.C.C. 173. But if a man make bricks for his own use merely, from earth either taken from his own land or purchased by him, even although he should sell some of them that he has not occasion to use, he is not thereby a trader within this statute. *Per Lord Mansfield in Parker v. Wells*, 1 T. R. 34. So if a man burn lime for sale, from chalk or lime-stone obtained upon his own farm, that would not make him a trader within the meaning of the bankrupt laws; *Ex p. Ridge*, 1 Rose, 316; although if he purchased the chalk or lime-stone, and burnt it for sale, no doubt it would be otherwise. If a man purchase timber (even standing timber) to sell again, with a view to profit, he is liable to be a bankrupt; *Holroyd v. Gwynne*, 2 Taunt. 178; but if he sell only such as he cuts down upon his own land, he is not. If a man buy milk to sell it again, with a view to profit, he is liable to be a bankrupt; but if he sell the milk only which he procures from his own cows, even although he occasionally also sell the cows when they are no longer fit for that purpose, he is not. *Carter v. Dean*, 1 Swans. 64. So if a man buy cheese or cider to sell again, with a view to profit, he is liable to be a bankrupt; but if he sell only the cheese which he has made from the milk of his own cows, or the cider which he makes from the fruit of his own trees, he is not. *Per Lord Mansfield in Parker v. Wells*, 1 T. R. 34. So if a man purchase the whole daily impression of a newspaper to sell again, with a view to profit, and risks the loss of such as may remain unsold, he is liable to be a bankrupt. *Gimingham v. Laing*, 2 Marsh. 236, 6 Taunt. 532. But merely labouring for hire will not render a man liable to be a bankrupt within this clause of the statute, (*see post*,) because there is neither a buying nor a selling. So buying and selling Government stock, or other public stocks or securities, does not render a man liable to be made a bankrupt, because they are not "goods or commodities" within the meaning of this clause of the statute. *Colt v. Netterville*, 2 P. Wms. 308. Nor will the buying and selling land, or any interest therein, make a man liable to be a bankrupt, for the same reason. *See Port v. Turton*, 2 Wils. 169.

Secondly, as to buying and letting for hire: this did not constitute a trader, within the meaning of any of the repealed statutes. For instance, buying horses for the purpose of letting them out on hire was not deemed a trading; because there was neither a selling nor intent to sell, *see 1 Vent. 29, & supra*. In this respect, then, the law is altered by this statute; and now

buying “ goods and commodities,” and letting them for hire, or buying them with intent to let them for hire, will constitute a man a trader, and render him liable to be made a bankrupt.

Thirdly, as to the workmanship of “ goods and commodities :” it is necessary to remark that purchasing the raw material, and manufacturing it into a vendible article for the purpose of sale, and with a view to profit, was always holden to be a selling and buying, within the former statutes of bankrupts, although part of the gain was to be derived from bodily labour. *Cooke*, 49. A butcher who purchased sheep or cattle, and killed them for the purpose of sale, was holden liable to be a bankrupt. *Dally v. Smith*, 4 *Burr.* 2148. So a baker who bought the flour of which he made his bread, &c.; *Per cur.* 3 *Mod.* 330; a shoemaker who purchased the leather, &c. of which he made his shoes; *Crampe v. Barne*, *Cro. Car.* 31. *Stanley v. Osbaston*, *Cro. El.* 268; a tailor who bought the cloth of which he made the clothes; *per Lord Loughborough* in *Parker v. Wells*, *Cooke*, 56; a milliner who bought the articles she used in making ladies’ dresses, &c.; *Cooke*, 48; a clothier who bought the wool or yarn of which he made his clothes; *Id.*; a tanner who purchased the hides he tanned; *per cur.* 3 *Mod.* 330; a goldsmith, *Cooke*, 48; locksmith, *Id.*, nailer, *Id.*, smith, *Id.*, plumber, *Id.*, paper-maker, *Com. Dig. Bankrupt A*, painter, *Cooke*, 48, who purchased the raw material which they respectively manufactured and sold; the sugar-baker who purchased the raw sugars he refined; *Com. Dig. Bankrupt A*; the distiller who purchased the corn or wash of which he made his spirits; *Id.* *Cooke*, 52; the iron-manufacturer who purchased the bar or rod iron he manufactured into wares, &c.; *Com. Dig. Bankrupt*, and the like: have respectively been holden subject to the bankrupt laws, under the former acts, as buying and selling with a view to profit. But if the manufacturer did not buy the raw material, as for instance in the case of the brickmaker who made bricks from the earth of his own lands, (*ante*, p. 27,) the alum-maker who manufactured the alum from his own lands, the cider-maker who manufactured his cider from the apples of his own orchard, *ante*, p. 28, &c. he was holden not to be a trader within the former statutes. In the present statute, however, where the words are “ all persons who seek their living by the *workmanship* of goods or commodities,” which do not certainly imply a buying to be necessary, but on the contrary are put in contradistinction to the words “ buying and selling” in a preceding part of the clause, it should seem that not only the above cases are within it, but that all persons who manufacture goods for sale, with a view to profit, are within it, whether they purchase the raw material or have it from their own land, &c. without purchase.

In order to make a man liable to be a bankrupt, "by buying and selling, or by the workmanship of, goods or commodities," it is necessary that there should have been a repeated practice of it, or a commencement of it, coupled with an intention to continue it; for a single act of buying and selling, unaccompanied with such intention, will not be sufficient. *Cooks*, 64. *Ex p. Blackmore*, 6 Ves. 3. *Ex p. Bowes*, 4 Ves. 168. *Hankey v. Jones*, Cowp. 748; and see *Bolton v. Sowerby*, 11 East 274. *Ex p. Gallimore*, 2 Rose, 424. *Gale v. Halfknight*, 2 Stark. 56. But if this intention exist, the extent of the trading, whether large or trifling, prior to the bankruptcy, will be immaterial. *Patman v. Vaughan*, 1 T. R. 572. *Bartholomew v. Sherwood*, 1 T. R. 573. *cit. Newland v. Bell*, 1 Holt, 221. And a declaration by the party, of the object of his buying, *Gale v. Halfknight*, 2 Stark. 56, or his representing himself as a dealer, and buying goods and offering them in exchange, *Millikin v. Brandon*, 1 Carr. & P. 380, is admissible evidence of his intention in this respect. It must be observed, however, that if a man be in a line of life which does not subject him to the bankrupt laws, a mere trifling buying and selling merely collateral to it, even though it yield him a profit, will not render him liable to be a bankrupt; as for instance, a schoolmaster who buys books, &c. and sells them to his scholars; *Valentine v. Vaughan*, Peake, 76. *Newton v. Trigg*, 1 Salk. 109; or the owner of a mine who buys candles and sells them to his workmen; *Ex p. Gallimore*, 2 Rose, 424; or the keeper of hounds who buys dead horses for his dogs, and sells the skins and bones for a profit: *Summersett v. Jarvis*, 3 B. & B. 2; 6 Moore, 56: is not thereby liable to be a bankrupt.

And lastly, the legality or illegality of the buying or selling, &c. makes no difference: it has been holden that a trader may become a bankrupt, although he have not taken out a license necessary to legalize his trade; *Sanderson v. Bowles*, 4 Burr. 2066; and that even a smuggler might become bankrupt, although his trading were obviously illegal. *Ex p. Meymot*, 1 Atk. 196. *Cobb v. Symonds*, 1 D. & R. 111; 5 B. & A. 516. But the bankrupt buying, in connection with others, to carry on a system of fraud, without any evidence of selling in the way of business, is not trading within the statute. *Millikin v. Brandon*. 1 Carr. & P. 380. It is observable that this clause of the act extends, not only to principals, but to all persons who, as "agents or factors" for others, "seek their living by buying and selling, or by the workmanship of, goods or commodities." Factors were before made subject to the bankrupt laws, by stat. 5 Geo. 2. c. 30. s. 39.

*Shall be deemed traders liable to become bankrupt. Provided that no farmer, grazier, common labourer or workman for hire, receiver general of the taxes, or member of or subscriber to any incorporated commercial or trading companies, established by charter or act of Parliament, shall be deemed as such a trader liable, by virtue of this act, to become bankrupt.]* By one of the repealed statutes, (stat. 5 Geo. 2. c. 30. s. 40.) no farmer, grazier, drover of cattle, or receiver general of taxes, was to be deemed a bankrupt. But still, if a farmer exercised a trade distinct and separate from his business of a farmer; if, for instance, he purchased horses, not for the purposes of his farm, but as a horse dealer, merely to sell again, with a view to profit, *Bartholomew v. Sherwood*, 1 T. R. 573. *cit. Wright v. Bird*, 1 Price, 20. *Ex p. Gibbs*, 2 Rose, 38, or purchased large quantities of potatoes, not to be used upon his farm, but merely to sell again at a profit; *Mayo v. Archer*, 1 Str. 513; or purchased earth and made bricks of it for sale, (*see ante p. 25*), in these and the like cases he would be liable to be made bankrupt, notwithstanding the statute. But if he purchased them for the mere purposes of his farm, even although he sell them again; *Cooke*, 67; or, having purchased too much, he sold the surplus; *Cooke*, 69. 73; or, if he occasionally bought and sold hay, corn, &c, with a view to profit, but without making them the means of seeking his living: *Stewart v. Ball*, 2 New Rep. 78, and *see Patten v. Brown*, 7 Taunt. 409: he would be within the exception of the statute.

It is remarkable that drovers, although excepted by the former statutes, are not mentioned in this; they therefore seem liable to be made bankrupts, under the preceding clause as to buying and selling. *see W. Jon.* 304. *Cro. Car.* 549. A drover is one who seeks his living by purchasing cattle or sheep, and selling them either at the same place or driving them to another and there selling them. A person who purchases cattle or sheep to sell again, and depastures them upon the land of another, is, it seems, a drover, as distinguished from the grazier, who depastures and fattens the cattle and sheep he buys upon his own land. So, a person who purchases cattle or sheep, for the purpose of selling them in the same state in which they are, and who depastures them upon his own lands for a few days, merely to refresh or rest them before he drives them to the place where he intends to sell them, is, it should seem, a drover. *see Mills v. Hughes, Willes*, 588. *Belton v. Sowerby*, 11 East, 274. *Carter v. Dean*, 1 Swan, 65.

As to common labourers or workmen for hire, they were always holden not to be within the bankrupt laws. And as to the members of public companies, it was already provided, in a



number of instances, that they should not be subject to the bankrupt laws; see stat. 13 & 14 C. 2. c. 24. s. 1—6, as to the members of the East India and Guinea companies; stat. 9 & 10 W. 3. c. 44. s. 74, as to the proprietors of India stock; stat. 7 & 8 W. 3. c. 31. s. 42, stat. 8 & 9 W. 3. c. 20. s. 47, and stat. 8 G. 1. c. 8. s. 43, as to stockholders in the bank of England, &c. &c.

II. Having thus treated of the species of trading which will render a man liable to be a bankrupt, we shall now proceed to consider the subject with reference to the individuals who may be made bankrupts.

By the present statute of bankrupts, (6 Geo. 4. c. 16. s. 135), it is enacted that “it shall extend to aliens, denizens and women, both to make them subject thereto, and to entitle them to all the benefits given thereby.” This clause, as to aliens and denizens, is the same in substance as a section in one of the repealed statutes (21 J. 1. c. 19. s. 15); upon which section it has been decided, that aliens or subjects residing in Scotland, *Alexander v. Vaughan*, Cowp. 398, Ireland, *Dodsworth v. Anderson*, T. Raym. 375, the Isle of Man, *Allen v. Cannon*, 4 B. & A. 418, the British colonies, *Ex p. Smith*, Cowp. 402. cit. and see *Ex p. Williamson*, 1 Atk. 82, or in any foreign country, *Bird v. Sedgwick*, 1 Salk. 110, trading to or from this country, that is to say, buying goods in England and sending them abroad for sale, or buying goods abroad, and sending them to England for sale, may, if they come here and commit an act of bankruptcy, be made bankrupts here.

By the above clause, the statute of bankrupts is extended to women. There never was a doubt but that a woman might be a bankrupt; the only doubt has been as to married women. And upon this subject, I think, it may be laid down as a general rule, that in all cases where the trade of a married woman is not under the control of her husband, and that he is not answerable for the debts contracted by her in it, or, in other words, in all cases where in actions against her upon her contracts in trade, coverture would be no plea, she is subject to the bankrupt laws as fully as a feme sole. see *Ex p. Preston*, Green, 8, Cooke, 40. *Ex p. Mear*, 2 Bro. 266. Thus, for instance, a feme covert, who is a sole trader according to the custom of London, may be a bankrupt. *Lavie v. Phillips*, 3 Bur. 1776. *Ex p. Carrington*, 1 Atk. 206.

An executor or other person who carries on a business as trustee, in pursuance of the will of a deceased trader, may be a bankrupt in respect of such business; *Ex p. Garland*, 10 Ves. 110. *Viner v. Cadell*, 3 Esp. 88. *Ex p. Nutt*, 1 Atk. 102. *Ex p. Richardson*, 3 Madd. 138; but not by merely selling off the

deceased's stock in trade, although he be obliged to purchase articles to mix with it in order to make it saleable. *Ex p. Nutt*, 1 *Atk.* 102. *Cooke*, 78, 79.

A person cannot be made a bankrupt by reason of a trading by him during his infancy ; *Ex p. Sydebottom*, 1 *Atk.* 146. *Es p. Moule*, 14 *Ves.* 603. *Ex p. Adam*, 1 *Ves. & B.* 494. and see *Stevens v. Jackson*, 4 *Camp.* 164 ; unless he have held himself out as an adult and *sui juris*, and traded as such. *Cooke*, 40. *Ex p. Adam*, 1 *V. & B.* 494, and see *Ex p. Watson*, 16, *Ves.* 265. But a lunatic may be a bankrupt, *Anon.*, 13 *Ves.* 590, provided the act of bankruptcy be committed during a lucid interval. *Ex p. Priddey*, *Cooke*, 48.

Peers and members of the House of Commons, (*chap. 3, post.*) see *Ex p. Meymot*, 1 *Atk.* 201, servants of foreign ambassadors, see *stat. 7 Ann. c. 12. s. 5.* clergymen, *Ex p. Meymott*, 1 *Atk.* 196. and see *Hankey v. Jones*, *Cowp.* 745, and public officers, as for instance, an exciseman, *Highmore v. Molloy*, 1 *Atk.* 206, or the like, may be bankrupts, if they be traders. But it may be necessary here to observe that a contract to victual the fleet will not make a man a trader, although he sell the surplus ; *Gibson v. Thompson*, 3 *Keb.* 451. *Skin.* 392 ; nor are commissioners of the navy, sutlers of the armies, the king's butler or stewards, butlers or stewards of inns of court, or farmers of the customs, traders by reason of their respective offices ; *Id.*

A second commission of bankrupt against an uncertificated bankrupt, cannot be supported ; because his property, as well after-acquired as otherwise, is already assigned under the first commission. *Martin v. O'Hara*, *Cowp.* 824. *Ex p. Martin*, 15 *Ves.* 114. However it is discretionary with the Great Seal to supersede such commission or not. see 16 *Ves.* 236. 472. As to a commission against a person who has taken the benefit of the insolvent act, see *Jellis v. Mountford*, 4 *B. & A.* 256.

And lastly, a man who has retired from business may become a bankrupt in respect of debts contracted during the period of his trading. *Anon.* 1 *Vent.* 5. 1 *L. Raym.* 287. *Willoughby v. Thornton*, 1 *Sel. N. P.* 175. *Ex p. Dewdney*, 15 *Ves.* 495. *Doe v. Lawrence*, 2 *Carr. & P.* 134.

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## SECTION II.

### *The Acts of Bankruptcy.*

Before we enumerate and explain the different acts of bankruptcy, it may be necessary to premise :—

1. That the Act of bankruptcy must be committed within England or Wales, *Ex parte Smith*, *Cowp.* 402 *cit. Inglis v. Grant*, 5 T. R. 530, unless otherwise hereinafter expressed in the statute.

2. That the act of bankruptcy may be committed after the party has retired from trade, provided it be during the existence of a sufficient petitioning creditor's debt contracted whilst in trade. *Ex parte Bamford*, 15 Ves. 449. *Ex parte Dewdney*, *Id.* 495. *Ex parte Bourne*, 16 Ves. 145. If committed at any time previous to the sealing of the commission,—although after the striking of the docket, *Wydown's case*, 14 Ves. 86. 88. *Ex parte Dufrene*, 1 Ves. & B. 51. 1 Rose 333. or even on the very day the commission is dated. *Id. and Hopper v. Richmond*, 1 Stark. 507. it will be sufficient.

3. That an act of bankruptcy, once committed, can never afterwards be purged or cancelled. *Per Buller, J. in Bromley v. Mundie*, Bull. N. P. 39. *Cooke*, 121. *Colkett v. Freeman*, 2 T. R. 59. Therefore a denial to a creditor is not purged, by his afterwards being admitted in consequence of his importunity. *Wood v. Thwaites*, 3 Esp. 245. So where a trader gave a general order to be denied, and he was denied to a creditor accordingly, but he immediately overtook the creditor and told him he was not afraid of him, but of another; this was holden not to have purged or cancelled the act of bankruptcy, which was complete at the time of the denial; *Mucklow v. May*, 1 Taunt. 479. and see *Ex p. Gardener*, 1 Ves & B. 45. *Colkett v. Freeman*, 2 T. R. 59. But if the act itself be equivocal, circumstances may be given in evidence to shew that it was not done with any intent to defeat or delay the creditors. *Ex p. Hall*, 1 Atk. 201. *Cooke*, 121, and see this section *passim*.

4. That an act of bankruptcy, concerted between the bankrupt and the petitioning creditor will not support a commission. *Bul. N. P.* 39. *Ex p. Gouthwaite*, 1 Rose, 87. *Ex p. Brookes*, 1 Buck, 257. *Bamford v. Baron*, 2 T. R. 594 *cit. Eyre v. Birbeck*, *Id.* 595 *cit.* But a creditor not privy to such concerted act, may avail himself of it. *Ex p. Bourne*, 16 Ves. 145. The bankrupts agreeing to an act of bankruptcy at the suggestion of a friend, without any concert with the creditors, is no objection to the commission. *Roberts v. Teasdale Peake*, N. P. 27.

By stat. 6. Geo. 4. c. 16. § 3. it is enacted, that if any such trader (*see ante p.* 23.) shall—

1. *Depart this Realm.*] This is one of the acts of bankruptcy described in stats. 13 El. c. 7. § 1 and 1 J. 1. c. 15. § 2. and in the same words. The word “realm” seems to mean nothing more than the extent of the jurisdiction of the courts in this country; for if a trader leave this country and go to Ireland, with intent to defeat or delay his creditors, it will be an act of

bankruptcy within this clause of the act. *Williams v. Nunn*, 1 Taunt. 270. *Windham v. Paterson*, 1 Stark. 144. And if a trader residing in Ireland or elsewhere, come to this country upon some temporary business, and again quit it, to avoid being arrested by a creditor, it is a departing this realm within the meaning of the statute. *Williams v. Nunn*, 1 Taunt. 270. 1 Camp, 152. *Holroyd v. Gwynne*, 2 Taunt. 176.

The departure must be with intent to defeat or delay his creditors in the recovery of their debts. *Vide post* p. 43. the departure of a man in embarrassed circumstances is strong but not conclusive evidence of the intention. *Ex p. Osborne*, 2 V and B. 177, 1 Rose 387.

2. *Or, being out of this realm, shall remain abroad.*] This, it seems, was not an act of bankruptcy previously to this statute, 1 Mont. 32. But see *Windham v. Paterson*, 1 Stark. 147. 4 Camp. 289. The remaining abroad must be with intent to defeat or delay the trader's creditors in the recovery of their debts. See *post* p. 43.

3. *Or depart from his dwelling-house.*] This is one of the acts of bankruptcy in stats. 13 El. c. 7. § 1 and 1 J. 1. c. 15. § 2 and described in the same words. Departing from the party's place of business, although he have a dwelling-house elsewhere, is it seems an act of bankruptcy within this clause of the statute *Judine v. Da Cossen*, 1 New Rep. 234, *Spencer v. Billing*, 1 Camp. 310, or, at all events, within the next clause of it, namely, otherwise absenting himself, and although no creditor actually calls during the absence. *Hammond v. Hicks*, 5 Esp. 139 And it has been holden that if a trader, who has no settled home or counting house, take up a temporary abode at a public house in the place where his business carries him, he commits an act of bankruptcy by departing from such public-house, with intent to defeat or delay his creditors. *Holroyd v. Gwynne*, 2 Taunt. 176. If a trader departs his house with intention to delay his creditors, though upon a groundless apprehension, it is an act of bankruptcy, *Ex p. Bamford*, 15 Ves. 419. The departure must be voluntary, *Maylin v. Eylo*, 2 Str. 809. and not compulsory, as in the case of an arrest. *Phillips, et. al. v. Sheriff of Essex*, Green. 53. The length of the trader's absence is immaterial. as the act of bankruptcy is complete the moment the trader leaves his house. *Holroyd v. Gwynn*, 2 Tann. 176. *Spencer v. Billing*, 3 Camp. 312. *Maylin v. Eylo*, 2 Str. 809.

The departure must be with intent to defeat or delay creditors in the recovery of their debts. *Fowler v. Paget*, 7 T. R. 509. and see *post*, p. 43.

4. *Or otherwise absent himself.*] This also is the same as in stats. 13 El. c. 7. § 1. 1 J. 1. c. 15. s. 2. Where a trader, being arrested, escaped from the officer into a neighbour's house, and when the officer inquired for him there, he was denied and the door fastened against him; and whilst there, the trader declared that he remained there not so much on account of the officers, for that debt was really paid, but for fear of other creditors; and when it became dark he went home: this was holden to be an absenting himself within the meaning of the statute, and an act of bankruptcy. *Bayley v. Schofield*, 1 M. & S. 338. So, a trader secretly withdrawing himself, after being arrested, absents himself within the meaning of this statute. *Phillips v. Peak, Green*. 52. So, where a trader went into a neighbour's shop, and said he expected momentarily to be arrested; and whilst there, he was told that a sheriff's officer was going towards his house, upon which he went immediately into the back shop, and concealed himself until he was told that the officer was gone away, when he answered, "Thank God, I will now go in," and he went home accordingly: this was holden to be an absenting himself within the meaning of the statute, and an act of bankruptcy. *Chenoweth v. Hay*, 1 M. & S. 676. So, where creditors called on a trader, and he admitted and spoke to them, and, pretending to go out for money to pay them, left his house, and did not return until he knew they were gone; this was holden to be an absenting himself within the statute, and an act of bankruptcy. *Bigg v. Spooner*, 2 Esp. 651. See also two other cases under the last head.

And if a trader, who has no settled dwelling, thus absent himself from his usual place of abode, it will be an act of bankruptcy. *Com. Dig. Bankrupt*, C. 1. Thus where a vender of a newspaper, in the habit of attending the Royal Exchange to collect news, retired from Change upon the approach of a creditor, and desired a friend to tell him he was not there; this was holden to be an absenting himself within the statute, and an act of bankruptcy. *Gimingham v. Laing*, 6 Taunt. 532. A trader absenting himself from any place with intent to delay a creditor is an act of bankruptcy. *Hallen v. Homer*, 1 Car. & P. 108. *Curteis v. Willes*, 1 Car. & P. 211. But merely appointing to meet one of his creditors at a given place, and failing to do so, is not. *Tucker v. Jones*, 2 Bing. 2.

The absenting must be voluntary, and not by means of an arrest; *Phillips v. Peak, Green*, 52. and see 3 Camp. 530, n; the duration of it seems to be immaterial. See ante, p. 32. But it must be with intent to defeat or delay the creditors in the recovery of their debts. See post, p. 43.

5. *Or begin to keep his house.*] This is also one of the acts of

bankruptcy created by stats. 13 El. c. 7. § 1. and 1 J. 1. c. 15. § 2. and described in the same manner. A trader withdrawing from a part of the house where he usually sat, and where he was free of access, to a more retired part, to avoid personal applications for money, is a beginning to keep house within this clause of the statute. *Dudley v. Vaughan*, 1 Camp. 271. So, not going to his counting-house, nor to the town near which he lived ; sending for his papers to his house ; not going out, &c. and the like : are circumstances from which a beginning to keep house may be inferred. See 16 Ves. 149. Or, if a man, not having a house of his own, keep within the house of another, or in chambers, or on board ship ; or if a miller keep within his mill, or the like : this is an act of bankruptcy within this clause of the statute. *Stone*, 9. 123. A country trader was in the habit of coming occasionally to London, and staying a day or two at a friend's house, where he wrote his letters, and was in the habit of ordering goods to be sent to him there ; in the same street lived one of his creditors ; and on a particular day he desired his friend not to inform the creditor that he was in town, as he would be teasing him for his money ; shortly after, the creditor called at the house upon business, and the bankrupt went into a back warehouse for ten minutes to avoid seeing him ; this was holden to be a beginning to keep house, and an act of bankruptcy. *Curtis v. Willes*, 4 D. & R. 224. And where the trader was in the rules of the King's Bench, but had come to his own house, out of the rules, and was there denied to a clerk of a creditor, it was held to be an act of bankruptcy. *Hughes v. Gilman*, 2 Car. & P. 32. So also was a denial to a creditor calling for his debt at the bankrupt's lodging, not his usual place of business ; for a creditor has a right to call on his debtor where he pleases. *Park v. Prosser*, 1 Car. & P. 176. And a denial to a collector of King's taxes is as much an act of bankruptcy as a denial to any other creditor. *Sanderson v. Laferest*, 1 Car. & P. 46. 336. But shutting up a banking-house, is not an act of bankruptcy upon the part of one of the firm who does not reside at it. *Ex p. Mavor*, 19 Ves. 543.

If a trader order that he shall be denied to a particular creditor, or to all creditors generally, or to every person who may call, this is evidence sufficient to raise a presumption of his beginning to keep house, withing the meaning of this clause of the statute, and the usual evidence given of it. *Mucklow v. May*, 1 Taunt. 479. *Bayly v. Schofield*, 1 M. & S. 338. *Lloyd v. Heathcote*, 2 B. & B. 388. *Lazarus v. Waithman*, 5 Moore, 313. *Per Lord Mansfield in Round v. Byde, Cooke*, 110, and see *Ex p. Bamford*, 15 Ves. 451. *Harvey v. Ramsbottom*, 2 D. & R. 142 ; 1 B. & C. 55. *Deffle v. Desanges*, 8 Taunt. 671. And a denial in pursuance of such order, is not now holden necessary to constitute the

act of bankruptcy. *Harvey v. Ramsbottom*, 2 D. & R. 142. 1 B. & C. 55. *Lloyd v. Heathcote*, 2 B. & B. 388, although formerly holden otherwise. *Garret v. Moule*, 5 T.R. 575. *Hawkes v. Saunders*, Cooke, 90. *Jeffs v. Smith*, 2 Taunt. 401. *Dudley v. Vaughan*, 1 Camp. 271. *Bramley v. Mundee*, Bull, N.P. 39. *Jackman v. Nightingale*, Id. 40. *Barnard v. Vaughan*, 8 T.R. 149. *Ex p. Levy*, 7 Vin. Abr. 61, pl. 14. *Ex p. White*, 3 Ves. & B. 129. *Ex p. Harris*, 2 Rose, 67. A denial to a creditor calling not for the payment of his debt, is an act of bankruptcy, if made under a conception that the object was to demand payment. *Ex p. White*, 3 V. & B. 128. S. C. *Ex p. Harris* 2 Rose, 67. And where the person desired that the trader might be told he called in consequence of a certain bill of exchange (mentioning the parties) being dishonoured, and was denied, the trader believing him to be a creditor, it was held to be an act of bankruptcy. *Bleasby v. Crossley*, 2 Car. & P. 213. The trader's being actually denied to a creditor, if not in pursuance of an order previously given by him, is no evidence of a keeping house within this clause of the statute, although the trader subsequently approve of it. *Ex p. Foster*, 1 Rose, 50, 17. Ves. 416. And see *Dudley v. Vaughan*, 1 Camp. 271.

The period during which the trader keeps home is immaterial, whether an hour or a day. See *Palm*. 325. It must appear, however, to have been done with intent to defeat or delay the creditors in the recovery of their debts. See *post*, p. 43.

6. *Or suffer himself to be arrested for any debt not due.*] This needs no explanation. It is the same, and described in the same terms, as one of the acts of bankruptcy created by stat. 13 El. c. 7. § 1. and re-enacted by stat. 1 J. 1. c. 15. § 2. It must be done with intent to defeat or delay the creditors in the recovery of their debts. See *post*, p. 43.

7. *Or yield himself to prison.*] This is also the same, and described in the same terms, as one of the acts of bankruptcy created by stat. 13 El. c. 7. § 1. and re-enacted by stat. 1 J. 1. c. 15. § 2. Where a trader was arrested for £28, and he chose rather to go to prison than pay the debt, (although at the time he had money sufficient to pay it,) in order, as he said, to compel his creditors to come to a composition; this was holden to be an act of bankruptcy within this clause of the statute. *Ex p. Barton*, 7 Vin. Abr. 62. It must be done with intent to defeat or delay the creditors in the recovery of their debts. See *posts* p. 43.

8. *Or suffer himself to be outlawed.*] The outlawry must be in

England or Wales ; and an outlawry in a county palatine will be sufficient. *Stone*, 124. *Com. Dig. Bankrupt*, *Radford v. Bludworth*, 1 *Lev.* 13. But it must be an outlawry suffered with intent to defeat or delay the creditors in the recovery of their debts. See *post*, p. 43.

9. *Or procure himself to be arrested, or his goods, monies, or chattels to be attached, sequestered or taken in execution.*] There was a similar clause in stat. 1 J. 1. c. 15. § 2 ; but there the words, “ or taken in execution,” were omitted ; and therefore it was holden that a fraudulent judgment, and execution thereupon, were not within the meaning of that act. *Harman v. Spottiswoode*, *Cooke*, 118. *Clavey v. Hayley*, *Cowp.* 427. For which reason, the words “ or taken in execution,” have been introduced in the present statute. The word “ attached,” means that species of attachment by which suits are commenced, such as the foreign attachment by the custom of London, and the like. *Per* *Ld. Mansfield*, in *Clavey v. Hayley*, *Cowp.* 428 ; and see *Cullen*, 41, 42,

The arrest, attachment, sequestration, or execution, must appear to have been procured by the bankrupt, with intent to defeat or delay his creditors in the recovery of their debts. See *post*, p. 43.

10. *Or make or cause to be made, either within this realm or elsewhere, any fraudulent grant or conveyance of any of his lands, tenements, goods, or chattels.*] The words of a similar clause in stat. 1 J. 1. c. 15. § 2. were, “ or make or cause to be made any fraudulent conveyance of his, her, or their lands, tenements, goods or chattels.” The words “ within the united realm or elsewhere” were introduced in the present statute, because it was decided that the above clause in stat. 1. J. 1. c. 15. s. 2. did not extend to conveyances executed out of England. *Inglis v. Grant*, 5 *T. R.* 530. *Norden v. James*, *Dick.* 533.

In the statute of James, as in this act, the words are “ any fraudulent conveyance ;” and under this head was classed all the cases of fraudulent conveyances, that is to say, voluntary conveyances without a valuable consideration, which are rendered void as against creditors, by the stats. 13 *El.* c. 5, and 27 *El.* c. 4 ; *Hassell v. Simpson*, 1 *Doug.* 88. and see *Whitwell v. Thompson*, 1 *Esp.* 68 ; and all grants and conveyances which a court of equity would declare fraudulent ; *Jacob v. Sheppard*, 1 *Bur.* 478. *Unwin v. Oliver*, *Id.* 481 ; as well as all cases which either appear from the facts themselves to be, or from the conclusion of law arising from these facts would be deemed to be, fraudulent as against third parties, however fair they might be as between



the parties themselves. *Worsley v. Demattos*, 1 Burr. 467, 474. *And see under this head, passim.*

Again, the words in the above statute of James are "any fraudulent conveyance;" which has been always deemed to mean, a conveyance by deed only; *Martin v. Pewtress*, 4 Burr. 2478, 80, 82. *Rust v. Cooper*, Cowp. 633, 635. 1 Doug. 87, cit. *Alderson v. Temple*, 4 Burr. 2235. *Harman v. Fisher*, Cowp. 117. *Manton v. Moor*. 7 T. R. 71. *Jolly v. Walle*, 3 Esp. 228; and the deed must have been complete and valid; therefore such a deed, not properly stamped, *see Whitewell v. Dimsdale*, Peak, N. P. C. 168, or not executed by a party, who must have joined in it, in order to render it complete and effective, *see Dutton v. Morrison*, 17 Ves. 193. *Antram v. Chase*, 15 East, 212. *Beech v. Gouch*, 1 Holt, 15, would not have been an act of bankruptcy.

In *Pulling v. Tucker*, 4 B. & A. 382, however, it was holden that a conveyance of the above description was an act of bankruptcy, although after executing it the bankrupt retained it in his possession, and continued to carry on his trade for three years afterwards, before a commission issued.

But in the present statute the words are "any grant or conveyance" of lands, goods, &c.; and a grant of goods, however untechnical it may sound, may possibly be construed to mean any assignment of goods by deed or otherwise. However, the matter is put beyond doubt, by a subsequent part of the statute, namely, that which is here inserted as the 12th act of bankruptcy, *post*, p. 43.

Again, the words of the statute of James are, "any fraudulent conveyance of his lands, tenements, goods, or chattels." This has been construed to include all conveyances by a trader of the entire of his property, whether for a past consideration, as, for instance, to a creditor for a debt already incurred, *Newton v. Chandler*, 7 East, 138. *Wilson v. Day*, 2 Bur. 827. *Hooper v. Smith*, 1 W. Bl. 441, or for a present consideration, as, for instance, to indemnify a surety, or to secure a person about to advance money to him, *Worsley v. Demattos*, 1 Bur. 467. *Butcher v. Easto*, 1 Doug. 295. *Hassel v. Simpson*, 1 Doug. 88. n. *Cook*, 104. *Hoffman v. Pitt*, 5 Esp. 80, or without consideration; *vide supra*; and whether the grantor afterwards retained possession of the property or not; *Worsley v. Demattos*, 1 Bur. 467, *Wilson v. Day*, 2 Bur. 827. *Butcher v. Easto*, 1 Doug. 295; and this, although the conveyance were made even three or more years before the docket was struck. *Pulling v. Tucker*, 4 B. & A. 302. *Law v. Skinner*, 2 W. Bl. 996. *Hassel v. Simpson*, 1 Doug. 88. n. And the same, where

the conveyance contained a colourable exception of a comparatively small part of the property. *Gayner's case*, 1 Bur, 477. *Law v. Skinner*, 2 W. Bl. 996. *Compton v. Bedford*, 1 W. Bl. 362.

So, if a trader made a conveyance of his property to trustees, in trust for all his creditors, *Tappenden v. Burgess*, 4 East, 230. *Dutton v. Morrison*, 17 Ves. 123. *Kettle v. Hammond*, Cooke, 106, Bull, N. P. 40. *Harman v. Fisher*, Cowp. 123. *Ex p. Scudamore*, 3 Ves. 84. *Newton v. Chantler*, 7 East, 138. *Bach v. Gooch*, 4 Camp. 232. *Jolly v. Wallis*, 3 Esp. 229. *Alderson v. Temple*, 4 Bur. 2240, this was an act of bankruptcy under the above statute of James, but could be set up as an act of bankruptcy only by those who had not signed the composition deed. *Eckhardt v. Wilson*, 8 T. R. 140. *Jackson v. Irvine*, 2 Camp. 49. *Bamford v. Baron*, 2 T. R. 594. n. *Ex p. Shaw*, 1 Madd. 598. *Ex p. Kilner*, Buck. 104. And see *Doe v. Anderson*, 5 M. and S. 162. And the same as to a conveyance by a trader in trust for his creditors, excepting one or more therein specified. *Pulling v. Tucker*, 4 B & A. 382. *Gayner's case*, 1 Burr. 477. cit. *Butcher v. Easto*, 1 Doug. 294. And see 2 Cowp. 632.

Also, a conveyance by a trader of a part only of his property, if this were made in contemplation of bankruptcy, it would be an act of bankruptcy; *Linton v. Bartlett*, 3 Wils. 47. *Devon v. Watts*, 1 Doug. 86. *Round v. Byde*, Cooke, 110. *Whitwell v. Thompson*, 1 Esp. 68. *Morgan v. Horseman*, 3 Taunt. 241. *Shaw v. Jakeman*, 4 East, 210. And see *Law v. Skinner*, 2 W. Bl. 996; otherwise not, if the conveyance were *bona fide* and without fraud. *Jacob v. Shepherd*, 1 Bur, 478. *Unwin v. Oliver*, 1 Bur. 481. *Wheelwright v. Jackson*, 5 Taunt. 109. *Manton v. Moor*, 7 T. R. 67.

And lastly, the conveyance, to come within the meaning of the statute of James, must have been by the bankrupt, see *Whitwell v. Thompson*, 1 Esp. 68, to some creditor or other person. Where a trader secretly carried his goods out of his house, to prevent their being taken in execution, it was holden not to be an act of bankruptcy. *Coles v. Davies*, 1 Lord Raym. 725. So a mere sale of property, or exchange of it for other property, would not be an act of bankruptcy. *Whitwell v. Thompson*, 1 Esp. 68. And see *Rust v. Cooper*, Cowp. 629. *Martin v. Pewtress*, 4 Bur, 2478. And see *Berney v. Davison*, 4 Moor, 126. *Berney v. Vyner*, 4 Moor, 322.

But under the present statute, not only a conveyance of all the bankrupt's property, even in trust for creditors, or a conveyance of part in contemplation of bankruptcy, are acts of bankruptcy, as upon the above statute of James, but also all

other grants or conveyances of any part of his property, if made with intent to defeat or delay the creditors in the recovery of their debts. *See post*, p. 43. But where a person conveyed all his property to a canal company, upon their advancing money to pay *all* his debts, it was holden to be no act of bankruptcy as a fraudulent conveyance. *Manton v. Moore*, 7 T. R. 67.

It is doubted if the assignment of book debts, 1 *Mont.* 37. n. K. but *see Ex p. Richardson*, 14 *Ves.* 186, or of policies of insurance on the trader's life, *Grogan v. Cooke*, 2 B. & P. 230, can amount to an act of bankruptcy.

Under this act, and formerly under the statute of James, it should seem necessary, in order to render a conveyance of property an act of bankruptcy, that it must have been a voluntary, and not a compulsive conveyance. *See Crosby v. Crouch*, 2 *Camp.* 166, 11 *East*, 256, and *see Cooke*, 102. So where the bankrupt gave security upon his property to a creditor, under apprehension (although groundless) of legal process, *Thompson v. Freeman*, 1 T. R. 155; or upon the pressing importunity of the creditor, *Ex p. Scudamore*, 3 *Ves.* 85. *Arbouin v. Hanbury*, 1 *Holt*, N. P. 575, it was held valid. But where the deed was executed manifestly in contemplation of bankruptcy, it was held to be fraudulent and an act of bankruptcy, notwithstanding the fact of the trader's being under arrest at the suit of his creditor, *Newton v. Chantler*, 7 *East*, 138, or being urged by the importunity of a creditor, *Morgan v. Horseman*, 3 *Taunt.* 241. *Singleton v. Butler*, 1 B. & P. 283, or being under the influence of the fear of legal process at the suit of the creditor, *Butcher v. Easto*, 1 *Doug.* 295. *Thornton v. Hargreaves*, 7 *East*, 549, at the time of the conveyance. And *see De Tastet v. Carrol*, 1 *Stark.* 88.

Lastly, by 6 Geo. 4. c. 16. s. 4. where any such trader shall, after this act shall have come into effect, execute any conveyance or assignment, by deed, to a trustee or trustees, of all his estate and effects, for the benefit of all the creditors of such trader, the execution of such deed shall not be deemed an act of bankruptcy, unless a commission issue against such trader within six calendar months from the execution thereof by such trader; provided that such deed shall be executed by every such trustee within fifteen days after the execution thereof by the said trader, and that the execution by such trader and by every such trustee be attested by an attorney or solicitor, and that notice be given within two months after the execution thereof by such trader, in case such trader reside in London or within forty miles thereof, in the London Gazette, and also in two London daily newspapers; and in case such trader does not reside within forty miles of London, then in the London

Gazette, and also in one London daily newspaper, and one provincial newspaper published near to such trader's residence; and such notice shall contain the date and execution of such deed, and the name and place of abode respectively of every such trustee, and of such attorney or solicitor.

11. *Or make or cause to be made any fraudulent surrender of any of his copyhold lands or tenements.*] This was formerly holden not to be an act of bankruptcy; because, as it was said, it could not be done with intent to defeat or delay creditors, inasmuch as creditors cannot have execution of copyhold lands. *Ex p. Cockshott*, 2 Bro. 502.

12. *Or make or cause to be made any fraudulent gift, delivery, or transfer of any of his goods or chattels.*] This includes mere manual delivery or transfer, as well as conveyances by deed or otherwise, the former of which was not provided for by the repealed statutes, *see ante*, p. 39. In other respects this clause requires the same construction as the 10th act of bankruptcy, *ante*, p. 39, and must be done in contemplation of bankruptcy. *Fidgeon v. Sharpe*, 1 Marsh. 196. 5 Taunt. 539. *Wheelwright v. Jackson*, 5 Taunt. 109.

*Every such trader doing, suffering, procuring, executing, permitting, making or causing to be made, any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his creditors, shall be deemed to have thereby committed an act of bankruptcy.*] So that every act of bankruptcy, hereinbefore described, consists, first, of the act itself, and secondly, of the intention with which it was committed. Of the acts themselves we have already treated: we shall now make a few observations on the intention with which they must be committed, in order to render them acts of bankruptcy, premising merely, that if the intention to defeat or delay the creditors actually existed at the time the act was committed, it is little matter whether a creditor were thereby defeated or delayed, or not. *Robertson v. Liddell*, 9 East, 487. *Wydown's case*, 14 Ves. 86. *Chenoweth v. Hay*, 1 M. & S. 676. *Aldridge v. Ireland*, 1 Taunt. 273. *Colkett v. Freeman*, 2 T. R. 59. *Ex p. White*, 3 Ves. & B. 128. *Ex p. Harris*, 2 Rose, 67. *Bayley v. Schofield*, 1 M. & S. 338. *Hammond v. Hincks*, 5 Esp. 139. *Williams v. Nunn*, 1 Taunt. 270. And *see Harvey v. Ramsbottom*, 2 D. & R. 142, 1 B. & C. 55.

As to the intent: this can be evidenced only by the trader's acts or admission. If a man admit that he committed the act with the intent of defeating or delaying his creditors in the recovery of their debts, it is almost conclusive evidence of it, and

can scarcely be explained away. See *Rawson v. Hay*, 2 Bing. 99. So, if the act be accompanied by circumstances from which the intent may fairly be presumed, it will be sufficient. If a creditor be in fact delayed by the act, this of itself is no evidence of the trader's intention in committing it; *Ex p. Osborne*, 2 Ves. & B. 177. *Fowler v. Padget*, 7 T. R. 509; but if the necessary consequence of the act be, that his creditors must be thereby defeated or delayed, this is presumptive evidence of his intention to defeat or delay them, *Ramsbottom v. Lewis*, 1 Camp. 279. *Holroyd v. Whitehead*, 3 Camp. 530, even although it appear that he had other ostensible reasons for it. See *Woodier's case*, Bull, N. P. 39. *Raikes v. Poreau*. Cooke, 85. And dict. per Lawrence, J. in *Fowler v. Padget*, 7 T. R. 516. So, if done to avoid an arrest, *Williams v. Nunn*, 1 Taunt, 270. *Holroyd v. Gwynne*, 2 Taunt, 176. *Warner v. Barber*, 1 Holt, 175. *Chenoweth v. Hay*, 1 M. & S. 676. *Harvey v. Ramsbottom*, 2 D. & R. 142. 1 B. & C. 55. *Ex p. Bamford*, 15 Ves. 459, even although merely for the purpose of gaining the term; *Maylin v. Eylo*, 2 Str. 809; or if done to avoid the importunity of creditors; *Ramsbottom v. Lewis*, 1 Camp. 279. *Dudley v. Vaughan*, id. 271. But see *Vincent v. Prater*, 4 Taunt. 603; or if done under a pretence which is false; see *Capper v. Desanges*, 3 Moore, 4; or if a trader receive his creditor, and leave his house under a pretence of going for money to pay him, but, instead of doing so, go to a billiard table, and do not return for many hours afterwards. *Bigg v. Spooner*, 2 Esp. 651. These, and the like, are circumstances from which it may be fairly presumed that the trader's intention was to delay his creditors; for the necessary consequence of them was, that the creditors must have been delayed by them.

But even where such a presumption is raised by circumstances attending the act, it may nevertheless be rebutted by evidence shewing that the trader did not at the time entertain the intention imputed to him. As, for instance, if he prove that upon departing the realm, he left a partner behind him in England, *Ramsbottom v. Lewis*, 1 Camp. 279, or that his presence abroad was absolutely necessary, in order to look after his concerns there, *Ex p. Mutrie*, 5 Ves. 576. *Warner v. Barber*, 1 Holt, 175. And see *Fowler v. Padget*, 7 T. R. 509, or that, previous to his departure, he made arrangements that the interests of his creditors should be attended to during his absence, *Ramsbottom v. Lewis*, 1 Camp. 277. And see *Windham v. Paterson*, 1 Stark. 144, or that he advertised in the public papers that he was going, that his ship would sail within the month, and that he would take charge of shipments, *Ex p. Osborne*, 2 Ves. & B. 177,

or in the case of a denial to a creditor, that the creditor called on a Sunday, *Ex p. Preston*, 2 Ves. & B. 311, 2 Rose, 21, or that he was denied because he called whilst the trader was at dinner, or engaged in some particular business, or at any other unseasonable hour; *Smith v. Currie*, 3 Camp. 349. *Shaw v. Thompson*, 1 Holt, 159. *Ex p. Hall*, 1 Atk. 201, or because the trader was sick, *Bull*, N. P. 39, or that the creditor called at the private house of the trader, and was there desired to go to the counting-house, because the trader never received persons on business at his private house: *Round v. Byde*, *Cooke*, 110, 111: all these and the like circumstances may be given in evidence, to rebut the presumption of the trader's intention, arising from circumstances accompanying the act, such as those above mentioned.

And the act must be done with intent to defeat or delay creditors: for if done to avoid performing a mere duty, as to avoid an arrest upon an *excommunicato capiendo*, or the service of process to enforce a decree in Chancery, (unless a decree for the payment of money,) *Com. Dig. Bankrupt*, C 1. *Cooke*, 89, or to avoid an attachment upon an award for not delivering goods pursuant thereto: *Per Willes*, C. J. in *Lingood v. Eade*, 1 Atk. 196: it will not of itself constitute an act of bankruptcy, unless accompanied by circumstances from which also an intent to defeat or delay creditors may fairly be presumed.

13. By stat. 6 Geo. 4. c. 16. § 5. it is enacted, that if any such trader, having been arrested or committed to prison for debt, or on any attachment for nonpayment of money, shall, upon such or on any other arrest or commitment for debt or nonpayment of money, or upon any detention for debt, lie in prison for twenty-one days, or having been arrested or committed to prison for any other cause, shall lie in prison for twenty-one days after any detainer for debt lodged against him, and not discharged, every such trader shall be thereby deemed to have committed an act of bankruptcy." A clause similar to this was in stats. 1 J. 1. c. 15. § 2. and 21 J. 1. c. 19. § 2. varying from it principally in the period of the imprisonment required by them to constitute an act of bankruptcy: that in stat. 1 J. 1. c. 15. § 2. being six months; in stat. 21. J. 1. c. 19. § 2. two months; and in this act, twenty-one days. But by this section of the present act, it is provided, "that if any such trader be in prison at the time of the commencement of this act, such trader shall not be deemed to have committed an act of bankruptcy, until he shall have lain in prison for the period of two months," The day of the arrest or commitment, is reckoned inclusive; *Glassington v. Rawlins*, 3 East, 407; and the docket may be struck,

and the commission issued, on the last of the twenty-one days, *Id.*, but not before. *Gordon v. Wilkinson*, 8 T. R. 507. *Ex p. Bowes*, 4 Ves. 168.

In order to constitute this act of bankruptcy, however, there must be an uninterrupted imprisonment of twenty-one days, under the arrest or commitment; and the act of bankruptcy will have relation to the first day of such uninterrupted imprisonment, so as to vest the property in the assignees from that time. *King v. Leith*, 2 T. R. 141. and see *Coppendale v. Brigden et al.* 2 Bur. 814. *Saunderson v. Gregg*, 3 Stark. 72. Therefore if a man arrested, be bailed out before the expiration of twenty-one days, and afterwards render in discharge of his bail, and remain in custody twenty-one days or upwards; this act of bankruptcy consists entirely of the imprisonment subsequent to the render, and has relation to the day of the render, and not to that of the original arrest. *Ex p. Du Frene*, 1 Ves. & B. 50. *Tribe v. Webber*, Willes, 464. If a trader, arrested by a sheriff's officer, be allowed to go at large for a few days, and then return into custody, and be removed by Habeas into the custody of the Marshal, and remain there the requisite time: the uninterrupted imprisonment commences upon his return into custody, and the act of bankruptcy has relation to that time. *Barnard v. Palmer*, 1 Camp. 509. Where a trader was arrested, but being too ill to be removed, was allowed to remain in his house in custody of the bailiff's follower, and was afterwards removed to a lock-up house, as soon as it could be accomplished with safety: it was holden that the bankruptcy related to the time of the arrest, because there had been in fact a continued imprisonment from that time. *Stevens v. Jackson*, 4 Camp. 164, 1 Marsh. 469, 6 Taunt. 106. So where a man was arrested, and sham bail put in for him, merely for the purpose of having him removed to the prison of the court, and he was removed accordingly: the act of bankruptcy was holden to relate to the day of the arrest, and not merely to the day of the render; for there was, in fact, no interruption of the imprisonment, but a mere transfer of the prisoner from one custody to another. *Rose v. Green*, 1 Bur. 437. So also having the benefit of the day rules is not an interruption of the imprisonment. for if the party is not actually within the walls, he is attended by an officer, or on security for the day, and bound to return in the evening. *Soame v. Watts*, 1 Carr. & P. 401.

Where the arrest or commitment is for a debt, it must be a legal debt; and therefore lying in prison upon an arrest at the suit of an executor, before probate, is not an act of bankruptcy. 3 Lev. 439. *Cooke* 113. Formerly a person in custody for a crime, (unless in custody under the commissioner's warrant, for

not answering, *R. v. Page*, 7 Price, 616, or the like,) could not commit an act of bankruptcy by lying in prison, even although he at the same time were detained for debt, and remained in prison twenty-one days after such detainer; *Ex p. Bowes*, 4 Ves. 168. and see *Ex p. Hilliard*, 1 Atk. 147; but this seems to be altered by the above section of the present statute, which, after mentioning an arrest and commitment for debt, says, "or having been arrested and committed to prison for any other cause, shall lie in prison for twenty-one days after any detainer for debt lodged against him," &c. And it has been recently holden, that lying in prison, detained for the nonpayment of Exchequer penalties for smuggling, was an act of bankruptcy. *Cobb v. Symonds*, 1 D. & R. 111. 5 B. & A. 516.

14. *Or if any such trader having been arrested, committed or detained for debt, shall escape out of prison or custody, every such trader shall be deemed to have thereby committed an act of bankruptcy from the time of such arrest, commitment or detention.*] It must be an escape in fact, and not merely that which might be deemed an escape in contemplation of law. And therefore, where a prisoner, arrested in Kent, and brought up by Habeas, was allowed to call at his attorney's in the city, by the officer who accompanied him, before he brought him to the judge's chambers, this, though an escape in law, was holden not to be such an escape as would constitute an act of bankruptcy, the prisoner having been substantially in custody the whole of the time. *Rose v. Green*, 1 Bur. 437. The words "being so arrested committed or detained," have reference to those immediately preceding them in the section, and comprised in the 13th act of bankruptcy, *ante*, p. 45.

15. By stat 6. Geo. 4. c. 16. s. 6. if any such trader shall file in the office of the Lord Chancellor's secretary of bankrupts a declaration in writing, signed by such trader, and attested by an attorney or solicitor, that he is insolvent and unable to meet his engagements, the said secretary of bankrupts, or his deputy, shall sign a memorandum that such declaration hath been filed, which memorandum shall be authority for the printer of the *London Gazette* to insert an advertisement of such declaration therein; and every such declaration shall, after such advertisement inserted as aforesaid, be an act of bankruptcy committed by such trader at the time when such declaration was filed; but no commission shall issue thereupon, unless it be sued out within two calendar months next after the insertion of such advertisement, and unless such advertisement shall have been inserted in the *London Gazette* within eight days after such declaration was filed; and no docket shall be struck upon such act of bank-



ruptcy, before the expiration of four days next after insertion of such advertisement, in case such commission is to be executed in *London*, or before the expiration of eight days next after such insertion, in case such commission is to be executed in the country ; and the gazette containing such advertisement shall be evidence to be received of such declaration having been filed.

And, by sect. 7., no commission under which the adjudication shall be grounded on the act of bankruptcy being the filing of such declaration, shall be deemed invalid by reason of such declaration having been concerted or agreed upon between the bankrupt and any creditor or other person.

16. By stat. 7. Geo. 4. c. 57. s. 13. The filing of a petition to the Insolvent Debtors Court, of every person in actual custody who shall be subject to the laws concerning bankrupts, for his or her discharge from custody according to the said act, shall be an act of bankruptcy from the time of filing such petition ; and that any commission issuing against such person and under which he or she shall be declared bankrupt before the time appointed by the said courts and advertised in the *London Gazette* for the hearing of such petition, or at any time within two calendar months from the time of filing such petition, shall have effect to avoid any conveyance and assignment of the estate and effects of such person, which shall have been made in pursuance of the provisions of the said act ; but the filing of such petition shall not be an act of bankruptcy, unless such person be so declared bankrupt before the time so advertised, or within two calendar months from the filing the petition.

17. By stat. 6 Geo. 4. c. 16. § 8. if any such trader, liable by virtue of this act to become bankrupt, shall, after a docket struck against him, pay to the person or persons who struck the same, or any of them, money, or give or deliver to any such person any satisfaction or security for his debt, or any part thereof, whereby such person may receive more in the pound in respect of his debts than the other creditors, such payment, gift, delivery, satisfaction or security, shall be an act of bankruptcy ; and if any commission shall have issued upon the docket so struck as aforesaid, the Lord Chancellor may either declare such commission to be valid, and direct the same to be proceeded in, or may order it to be superseded, and a new commission may issue, and such commission may be supported either by proof of such last-mentioned or of any other act of bankruptcy ; and every person so receiving such money, gift, delivery, satisfaction or security as aforesaid, shall forfeit his whole debt, and also repay or deliver up such money, gift, satisfaction or security as aforesaid, or the full value thereof, to such person or persons as the commissioners acting under such original commission, or any

new commission, shall appoint for the benefit of the creditors of such bankrupt. See *Ex p. Brown*, 15 Ves. 472. *Ex p. Mear*, 1 Mont. 29. *Ex p. Vernon*, Cox, 61. *Vernon v. Hankey*, Cooke, 116. Where the petitioning creditor was holder of a bill of exchange, accepted by the bankrupt, and undue, it was holden that payment of the bill by the bankrupt afterwards, and after the commission, was an act of bankruptcy. 1 Ves. jun. 157. And this obtaining of payment or security, seems to be an act of bankruptcy, although it be uncertain at the time whether the person obtaining it will thereby receive more than the other creditors. See *Ex p. Parton*, 15 Ves. 463. But when a friend of the debtor, agreed to give a creditor 5s. in the pound on the amount of his debt, on condition that the creditor should sue out a commission against the debtor, this was holden to be a legal contract, and a bill given for the amount of it a valid bill. *Fry v. Malcolm*, 5 Taunt. 117.

The cases above cited, have been decided on a similar clause in stat. 5 G. 2. c. 30. § 24., the only material difference between which and the present clause is, that the former only contemplated private bargains, "whereby such person suing out such commission, shall *privately* have and receive more in the pound in respect of his debt, than the other creditors," &c. (see 5 G. 2. c. 30. § 24. and *Foyer v. Hebblewhaite*, 15 Ves. 464. *cit. Ex p. Brine*, Buck, 19. 108.); but under this statute it is immaterial whether the money or security be given to the petitioning creditor privately or not.

18. Acts of bankruptcy by members of parliament. See ch. 3. *post*.

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### SECTION III.

#### *The Petitioning Creditor's Debt.*

*What.*] No commission shall be issued, unless the single debt of the creditor, or of two or more persons being partners, petitioning for the same, shall amount to one hundred pounds or upwards; or unless the debt of two creditors so petitioning; shall amount to one hundred and fifty pounds or upwards: or unless the debt of three or more creditors so petitioning, shall amount to two hundred pounds or upwards. 6 Geo. 4. c. 16. § 15 see *Hill v. Neale*, 2 New Rep. 196. *Smith v. Mills*, 1 T. R. 475.

And it must be a debt, for which, if payable at the time, an action at law could be maintained by and in the name of the petitioning creditor. Therefore, the assignee of a bond, cannot be a

petitioning creditor. *Ex p. Lee*, 1 P.W. 782. *Medlicot's case*, 2 Str. 899. *Ex p. Sutton*, 11 Ves. 163. So, a husband cannot alone be the petitioning creditor, where the debt was due to his wife *dum sola*, *Ramsay v. George*, 1 M. & S. 176, or as executrix; *Master v. Winter*, *Davies*, 292, 293, 2 Mont. 129, 1 Sel. N.P. 247; the wife must join in the petition. But a husband may sue out a commission of bankrupt, on a promissory note given to his wife *dum sola*; *Ex p. Barber*, 1 Glyn & J. i; for the property in it vested in him solely upon marriage, and he might have sued upon it. 1 B. & A. 218. So, one of several obligees or partners cannot alone sue out a commission upon the bond or partnership debt respectively, but the others must join. *Buckland v. Newcome*, 1 Taunt. 477. 1 Camp. 474. So, an alien enemy cannot be a petitioning creditor. Even where some of several partners were British subjects residing in an alien enemy's country, and carrying on trade there, the others being British subjects residing in this country, it was holden that a debt due to them would not support a commission. *M'Connel v. Hector*, 3 B. & P. 113. But this seems to be doubtful; at all events, if he trade in the alien's country by license from this government, *Ex p. Baglehole*, 18 Ves. 525, 1 Rose, 271, or if it do not appear that he traded there or otherwise adhered to the enemy, his mere residence there will not incapacitate him to sue, and consequently he may be a petitioning creditor, either by himself or with others. *Roberts v. Hardy et al.* 3 M. & S. 533, 2 Rose, 174. A claim arising from merely equitable considerations, as, for instance, a decree for the payment of interest, &c. in a suit for the specific performance, (*see Carpenter v. Thornton*, 3 B. & A. 52.) cannot constitute a good petitioning creditor's debt, *Cooke*, 20. and *see Ex p. Hillyard*, 1 Atk. 147, 2 Ves. 407, because no action at law can be maintained for the recovery of it; nor can a debt barred by the statute of limitations, for the same reason. *Ex p. Dewdney*, 15 Ves. 479, 491. and *see Ex p. Roffey*, 2 Rose, 245. *Quantock v. England*, 2 W. Bl. 703. *Mosely* 37. *see Gregory v. Hurrill*, 6 Moor, 525. but *see Swayn v. Wallinger*, 2 Str. 746. *Fowler v. Brown*, *Cooke*, 21. *contra*. So, a debt founded upon an illegal consideration, cannot be a good petitioning creditor's debt, for the same reason. *See Wells v. Girling*, 1 Brod. & B. 447. So, a balance due upon an exchange of acceptances, cannot be a good petitioner's creditor's debt, unless the creditor have paid his acceptances; *Sarratt v. Austin*, 4 Taunt. 200; even where A. B. and C. had drawn a bill of exchange on D. and it appeared that A. had engaged to provide for it when it should become due, it was holden that A. B. and C. could not be petitioning creditors in respect of that bill, although it also appeared that A.'s engagement was made in fraud of his partners. *Richmond v. Heapy et al.* 1 Stark. 102.

So, a partner of the debtor cannot be a petitioning creditor against him, unless in cases where he might maintain an action against him for the amount of the debt. See *Windham v. Patterson*, 1 Stark. 144. *Marston v. Barber*, Gow. 17. *Ex p. Nokes*, 1 Mont. 21. So, a creditor who has taken his debtor in execution, cannot be a petitioning creditor against him; *Cohen v. Cunningham*, 8 T. R. 123. *Burnaby's case*, 1 Str. 653; because his debt, in contemplation of law, is satisfied, and he cannot maintain any action for the amount of it. But if he have not taken the debtor in execution, if he have merely proceeded against him in an action for a debt which of itself would be a good petitioning creditor's debt, he may sue out a commission of bankrupt against him, either before or after he obtains judgment against him; *Bryant v. Withers*, 2 M. & S. 123; if, on the other hand, the proceedings were for a cause of action sounding merely in damages, as, for instance, an action for a breach of promise of marriage, no petitioning creditor's debt can actually or impliedly exist until judgment. *Ex p. Charles*, 14 East, 197, 16 Ves. 256. A factor who has sold goods to the debtor in his own name, even although he have named his principal, is a good petitioning creditor, (the principal not interfering,) whether he sold upon a commission *del credere* or not; for he might have sued for the amount in his own name. *Sadler v. Leigh et al.* 4 Camp. 195. *Young et al. v. Smith et al.* 6 Esp. 121. So, an uncertificated bankrupt may be a petitioning creditor, if his assignees do not interfere and claim the debt. See *Ex p. Cartwright*, 2 Rose, 230. So, a sum of money awarded by arbitrators, is a good petitioning creditor's debt, until set aside for matter *dehors*; *Dawe v. Holdsworth*, Peake, 64, and see *Ex p. Lingard*, 1 Atk. 240; provided the award do not appear bad on the face of it, *Ex p. Lownds*, 1 Mont. 24, or the deed of submission be not void. *Antram v. Chase et al.* 15 East, 209, or the like. So, a debt due to an executor, even before probate; *Ex p. Paddy*, Buck, 235. *Rogers v. James*, 7 Taunt. 147, 2 Marsh. 425. and see *id.* 480; or a debt due from the bankrupt to his wife's trustees; *Ex p. Powell*, 1 Mont. 21; a debt due to a surety; *Haylor v. Hall*, Palm. 325; a debt due upon a solicitor's bill, even before taxation, or pending an order to tax it, *Mosely*, 27, (at the risk, of course, of its being reduced upon taxation, *Ex p. Sutton*, 11 Ves. 163. *Ex p. Steele*, 16 Ves. 166. *Ex p. Howell*, 1 Rose, 312, and even before it be signed and delivered according to the statute, *Ex p. Prideaux*, 1 Glyn & J. 28;) a debt due on account, though not liquidated, *Flower v. Herbert*, 2 Ves. 326. and see *Marson v. Barber*, Gow. 17, *Ex p. Bowes*, 4 Ves. 168, and the like; are all good petitioning creditors' debts, for the reason above given, namely, because the creditor may maintain an

action for them in his own name. But an act of parliament, intituled, "An act to enable a certain insurance society to sue and be sued in the name of their secretary," and enacting that they might commence all actions and suits in his name as nominal plaintiff, does not extend to enable such secretary to issue a commission of bankruptcy. *Guthrie v. Fisk*, 5 D. & R. 24; 3 B. & C. 178. and see 1 Glyn & J. 245. So, it has been holden that if a creditor to the amount of £100, receive, after notice of an act of bankruptcy, a sum in part liquidation of the debt, this does not preclude him from suing out a commission; because the payment was merely void, and the original debt remained in full force. *Mann v. Shepherd*, 6 T. R. 79.

Interest, even on a bill of exchange, cannot be the subject of a petitioning creditor's debt, unless expressed to be payable upon the face of the instrument; for, otherwise, it is merely damages to be recovered in an action, and not a debt in law. Therefore it cannot be added to the principal, to make up the amount required to constitute a petitioning creditor's debt. *Cameron v. Smith*, 2 B. & A. 305. *Ex p. Greenway, Buck*, 412. *Ex p. Burgess*, 8 Taunt. 660, 2 Moore, 745. Formerly it was holden not to be proveable under the commission; *Ex p. Greenway, Buck*, 412; but now, interest on bills of exchange or promissory notes, up to the time of suing out the commission, is allowed to be proved, by stat. 6 G. 4. c. 16. § 57.

A debt consisting of promissory notes of the bankrupt for £100, purchased previously to the act of bankruptcy, from the payees, by the petitioning creditor, at the rate of 10s. in the pound, has been holden to be a good petitioning creditor's debt. *Ex p. Lee*, 1 P. Wms. 782. Yet, where a banker became bankrupt, and a debtor of the estate had, after issuing of the commission, purchased the bankrupt's cash notes to the amount of the debt, for much less than their nominal value, it was holden that, having obtained them subsequently to the bankruptcy, he could not set them off in an action brought against him by the assignees. *Hodson et al. v. Young, B. R. East*, 1814. *MS. and see Dickson v. Evans*, 6 T. R. 57. But the distinction between these cases is evident and material; in the latter case, the purchase and set off of the notes would be a fraud upon the remaining creditors; in the former case, not.

It has been holden that an infant cannot be a petitioning creditor, *Ex p. Barrow*, 3 Ves. 554, because he cannot enter into the bond required upon suing out a commission; nor can he be one of several petitioning creditors, even although the others execute the bond. *Ex p. Moreton, Buck*, 42.

A creditor who has signed a composition deed, or been other-

wise privy or assenting to it, may be a petitioning creditor; *Doe v. Anderson*, 5 M. & S. 161; but he cannot set up the deed as the act of bankruptcy. *Bampford v. Baron*, 2 T. R. 594. *Tappenden et al. v. Burgess*, 4 East, 230. *Ex p. Kilner*, Buck, 104. *Ex p. Shaw*, 1 Mad. 598.

A creditor having proved his debt under a former commission, which was invalid, is not thereby precluded from suing out a new commission against the bankrupt, if his debt be in other respects a good petitioning creditor's debt; this may be a ground perhaps for the Chancellor to interfere, but it is unobjectionable in point of law. *Beardman et al. v. Shaw*, 1 New Rep. 263. But it would be otherwise, of course, if the former were a valid commission. Nor can a commission be sued out against an uncertificated bankrupt. *Ex p. Martin*, 15 Ves. 114. *Ex p. Crew*, 16 Ves. 236. But a creditor of an insolvent debtor, may sue out a commission against him, upon a debt as to which the insolvent had been discharged. *Jellis v. Mountford*, 4 B. & A. 256. So also a creditor whose debt was omitted in the schedule filed in the Insolvent Debtor's Court, upon the discharge of the debtor, was held entitled to sue out a commission. *Ex p. Shuttleworth*, 2 Glyn & J. 68; but in such a case, if there is no property but what may fairly be administered under the insolvent debtor's act, the court would interfere and restrain the commission.

Creditors who hold collateral securities for their debts, such as a mortgage, *Ex p. Jackson*, 5 Ves. 357. *Ex p. Topham*, 1 Mad. 38, warrant of attorney, see *Miles et al. v. Rawlyns et al.* 4 Esp. 194, judgment, *Bryant v. Withers*, 2 M. & S. 123; bond, *Ambrose v. Clendon*, 2 Str. 1042, bill of exchange, *Ex p. Douthat*, 4 B. & A. 67. *Ex p. Marsden*, 1 Mont. 27, or any other security, though of a higher nature than the original debt, *Ambrose v. Clendon*, 2 Str. 1042, may be petitioning creditors in respect of such original debt; taking or obtaining such security, being holden not to be such an extinguishment of the original debt, as to prevent the party suing out a commission upon it. Although such collateral security be afterwards satisfied, as if the bill or bond be paid when due, this circumstance will not invalidate or affect the commission. *Ex p. Douthat*, 4 B. & A. 67. Where a creditor to the amount of £100, received from his debtor a bill drawn by him upon another person, who had not then or when the bill became due, any effects of the drawer's in his hands, and the bill when due was dishonoured, but no notice given to the drawer of its dishonour, the court held that the bill might be treated as a nullity, notwithstanding the want of notice, and that the creditor might sue out a commission in respect of the whole of his original debt. *Bickerdike v. Bollman*, 1 T. R. 405. In the case of a mortgagee, he may sue out a commission, without

giving up his security. *Ex p. Jackson*, 5 *Ves.* 357. and see *Ex p. Topham*, 1 *Mad.* 38. Lastly, the debt must be due from the bankrupt, in his own right, and not in *auter droit*, as executor or the like; whether incurred by the bankrupt in the way of his trade or not, is wholly immaterial. See *Swaine v. Demattos*, 2 *Str.* 1211. *Pattison v. Banks*, *Cowp.* 540. But it is no objection that it is due to the petitioning creditor in *auter droit*, as executor or the like. See *Ex p. Paddy*, *Buck*, 235. *Rogers v. James*, 7 *Taunt.* 147, 2 *Marsh*, 425. and see *Id.* 480.

*When accrued.*] The petitioning creditor's debt must have accrued before the debtor ceased to be a trader, *Dawe et al' v. Holdsworth et al' Peake*, 64, *Doe v. Lawrence* 2 *Car. & P.* 134, that is to say, either whilst he was in trade, or before he entered into it; *Cooke* 28; where the bankrupt contracted a further debt after he left off trade, and paid money to the creditor without any direction as to its application, the Court held that the payment should be applied to the old debt; and that as the new debt was contracted after the debtor had left off trade, there was no sufficient petitioning creditor's debt to support the commission. *Meggot v. Mills*, 1 *Ld. Raym.* 286, *Comb.* 463. As to what shall be deemed a retirement from trade, see *Ex p. Cundy*, 2 *Rose*, 357. *Ex p. Paterson*, 1 *Rose*, 403. *Wharam v. Routledge*, 5 *Esp.* 235; where a trading is proved, it shall be presumed to continue, until the contrary be shewn. *Heanny v. Birch*, 3 *Camp.* 233.

And the debt must have accrued before the act of bankruptcy on which it is intended to found the commission; *Moss v. Smith*, 1 *Camp.* 489; therefore where a verdict was obtained against a trader, before an act of bankruptcy, in an action for breach of promise of marriage, and judgment was not obtained until after the act of bankruptcy, it was holden that this did not constitute a good petitioning creditor's debt. *Ex p. Charles*, 14 *East*, 197. So, where a person accepted an accommodation bill for a trader before an act of bankruptcy, and after the act of bankruptcy paid the amount to a third person to whom it was negotiated, this was holden not to be a good petitioning creditor's debt; for until payment, the acceptor was but a surety for the bankrupt, and only became a creditor by the payment, which, being after the act of bankruptcy, could not create a debt to support the commission. *Ex p. Holding*, 1 *Glyn & J.* 97. So, where the debt was contracted after the arrest, and before the trader had lain in prison the requisite time, it was holden not sufficient. *Ex p. Daggett*, 1 *Mont*, 26, *n.* (a). In the case of bills of exchange or promissory notes, if the bill or note be given by the bankrupt before the act of bankruptcy, it is sufficient; see *Macarty v. Barrow*, 2 *Str.* 949; and each assignment

of it afterwards, will have reference to the time when the bankrupt parted with it. Where a trader gave a creditor, in payment of a debt due to him, a bill drawn by him upon another person, and the trader committed an act of bankruptcy before the bill was due, or was even presented for acceptance; the bill was holden to be a good petitioning creditor's debt, even although it appeared that subsequently to the commission it was duly paid by the acceptor. *Ex p. Douthat*, 4 B. & A. 67. Where a trader gave his promissory note for £200 to A. before an act of bankruptcy by the trader, and A. indorsed it to B. after the act of bankruptcy, it was holden that B. was a good petitioning creditor; *Anon.* 2 Wils. 135. *Ex p. Thomas*, 1 Atk. 73; and the same, where the note became due before the act of bankruptcy, and was endorsed to the petitioning creditor after it was due and dishonoured, and after the act of bankruptcy. *Bingley v. Maddison*, Cooke, 32. *Glaister v. Hower et al.*, 7 T. R. 498. *Ex p. Wainman*, Cooke, 34. But the bill or note must be actually indorsed to the petitioning creditor, before the suing out of the commission; and must be proved to be so, for that fact shall not be presumed. *Rose et al' v. Rowcroft*, 4 Camp. 245. *Dixon v. Evans*, 6 T. R. 59. And where a trader accepted a bill for the amount of some goods, leaving a blank for the creditor's name as drawer, and the creditor did not sign his name to it until after he had sued out a commission against the acceptor; it was holden that the bill in this case was not sufficient as a petitioning creditor's debt to support the commission. *Ex p. Farenden*, Buck, 34. And in all cases, if a sufficient petitioning creditor's debt exist at the time of the act of bankruptcy, the creditor's obtaining a security of a higher nature for it after the act of bankruptcy, such as a judgment, *Bryant v. Withers*, 2 M. & S. 123. *Ex p. Bryant*, 1 Ves. & B. 211, bond or other security, *Ambrose v. Clendon*, 2 Str. 1042. *Ex p. Marsden*, 1 Mont. 27, will not preclude him from suing out a commission upon the original debt.

But although the petitioning creditor's debt must exist at the time of the act of bankruptcy upon which the commission is to be grounded, *vide supra*, and see *Moss v. Smith et al'*, 1, Camp. 489, yet, by stat. 6 G. 4. c. 16. § 19. no commission shall be deemed invalid; by reason of any act or acts of bankruptcy prior to the debt or debts of the petitioning creditor or creditors or any of them, provided there be a sufficient act of bankruptcy subsequent to such debt or debts. See *Donovan v. Duff*, 9 East, 21. *Bryant v. Withers*, 2 M. & S. 127.

Also, although the petitioning creditor's debt must be due, that is, must have existence, at the time of the act of bankruptcy, it is not necessary that it should be actually payable at



that time ; for, by stat. 6 G. 4. c. 16. § 15 “ every person who has given credit to any trader upon valuable consideration for any sum payable at a certain time,” (*see Exp. Page 1, Glyn & J. 100.*) “ which time shall not have arrived when such trader committed an act of bankruptcy, may so petition or join in petitioning as aforesaid, whether he shall have any security in writing or otherwise for such sum or not.” Before this statute, such persons only as had bills, bonds, promissory notes or other written securities for their debts, could petition, in cases where the debt was not actually payable at the time of the act of bankruptcy ; 5 G. 2. c. 30 § 22. *Hoskins v. Duperoy*, 9, *East*, 498. *Price v. Nixon*, 5 *Taunt.* 338. *Cothey et al. v. Murray*, 1 *Camp.* 335. *Ex p. Roberts*, 1 *Mad.* 72. *Nickson, v. Jepson*, 2 *Stark.* 227. and *see Ex p. Douthat*, 4 *B. & A.* 67 ; a defect in the bankrupt laws, which now seems to be remedied by this statute. By stat. 7 G. 1. c. 31. § 1. persons who should give credit on such securities as aforesaid, [namely, bills, bonds, promissory notes, or other securities,] to any person who should afterwards become bankrupt, upon a good and valuable consideration *bonâ fide*, might prove for them under the commission, although the same were not payable at the time of the act of bankruptcy ; and by stat. 5 G. 2. c. 30. § 22. reciting this clause it was enacted that it should be lawful for such person to petition or join in petitioning for the commission. Now, under this stat. 5. G. 2. c. 30. § 22. not only the person to whom the bankrupt gave negotiable securities, but also any person to whom they were afterwards indorsed, might petition for the commission ; *Cullen*, 74. 1 *Mont.* 44. *Anon.* 2 *Wils.* 135 ; and this, whether the bankrupt were drawer or acceptor, *see Ex p. Douthat*, 4 *B. & A.* 67, or whether the bills or notes, &c. were payable at the time of suing out the commission or not. *Id.* It should seem therefore, that the same construction should be given to this clause of stat. 6 G. 4- c. 16. § 15. *supra.* But a debt, to be within this statute, must be payable at a time certain, either by express stipulation to that effect, or, it should seem, by the custom of the trade.

It has been holden that a bill for £100. drawn by the bankrupt, and not due at the time of the act of bankruptcy, but due before the holder petitions for the commission, is a good petitioning creditor's debt ; although if a rebate of interest were to be made for the time it had to run when the act of bankruptcy was committed, it would of course be otherwise. *Brett v. Levett*, 13 *East*, 213 ; where the petitioning creditor had levied execution against the bankrupt for part of his debt, and shortly after issued a commission upon the residue, he was ordered to furnish the assignees with the particulars of his debt, and the time when it was contracted ; and although in aid of an action by the

assignees against the Sheriff, impeaching the execution on the ground of its being overreached, by an act of bankruptcy, *Ex p. Glover* 2 Glyn & J. 60.

[*How proved.*] The petitioning creditor must make an affidavit of his debt, before he sues out the commission; and he must afterwards make deposition as to his debt before the commissioners: as shall be more fully mentioned in the next two sections.

In actions at law, the petitioning creditor's debt is proved thus:—In actions by or against the assignees, if no notice of disputing it have been served in the manner directed by the statute, (*see post*, tit. "*Assignees*," ) the deposition of the petitioning creditor as to his debt, filed among the proceedings is to be deemed sufficient evidence of the debt therein stated; 6 Geo. 4. c. 16. § 90; but it is still open to the court to consider whether the debt there stated, be in law a good petitioning creditor's debt or not. But in all other actions, and even in actions by or against assignees where such notice has been duly served, the petitioning creditor's debt must be proved in the same manner as in action by him against the bankrupt. *Bul. N. P.* 37. *See Abbot v. Plumb.* 1 Doug. 216. All admissions by the bankrupt previously to the issuing of the commission, *Dowton v. Cross*, 1 Esp. 168. and *see Hoare v. Coryton*, 4 Taunt. 560, entries in his books, posted by himself, before the bankruptcy, *Watss v. Thorpe*, 1 Camp. 376. and *see Ewer v. Preston*, *Hardw.* 378, and the like, are evidence of the petitioning creditors debt. So his promissory notes, bearing date before the bankruptcy, are *prima facie* evidence of it. *Taylor v. Kinlock*, 1 Stark. 177. But no declaration or letter of the bankrupt, after the bankruptcy is admissible as evidence of the petitioning creditor's debt; *Id.* *Smallcombe v. Bruges* 13. Price 136; nor will even an account, down to a time before the bankruptcy, signed by the bankrupt, be received as evidence of it, unless it be also proved to have been signed by the bankrupt before the bankruptcy; *Hoare v. Coryton*, 4 Taunt. 560; except in actions by the bankrupt himself, where of course his admissions at any time will be received in evidence against him. *See Jarrett v. Leonard*, 2 M. & S. 265. The bankrupt himself, of course cannot be a witness for this purpose. *Sanderson v. Laferest* 1 Car. & P. 46; but a creditor may, if he release to the assignees; *Arch. Pl. & Ev.* 391; or even an assignee may prove the petitioning creditor's debt, if he have released his claim as a creditor; for as assignee he merely stands in the situation of a trustee to the estate. *Tomlinson v. Wilkes*, 5 Moor, 172. If the debt be proved to have once existed, its continuance will be presumed, until the contrary be

proved. *Jackson v. Irvin*, 2 Camp. 48. *Ever v. Preston*, Hardw. 378. But proof of bankrupt having drawn or indorsed a bill of exchange for £100, and of that bill being overdue in the hands of a holder, is not sufficient proof of a petitioning creditor's debt, without proof of a default of payment by the acceptor, *Giles v. Powell*, 2 Carr. & P. 259.

*Defects in it, how aided.]* By stat. 6 Geo. 4. c. 16. § 18. if after adjudication the debt or debts of the petitioning creditor or creditors, or any of them, be found insufficient to support a commission, it shall be lawful for the Lord Chancellor, upon the application of any other creditor or creditors, having proved any debt or debts sufficient to support a commission, (provided such debt or debts has or have been incurred not anterior to the debt or debts of the petitioning creditor or creditors,) to order the said commission to be proceeded in, and it shall by such order be deemed valid. But before a creditor can make an application to the Chancellor under this section of the statute, he must apply to the commissioners to expunge the petitioning creditor's debt, *Ex p. Chappell*, 2 Glyn & J. 131.

As to a mistake in the affidavit of debt, and how remedied, see *Ex p. Maughan and Smith*, 1 Glyn & J. 365.

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#### SECTION IV.

##### *The Docket and Commission.*

It being first satisfactorily ascertained that the party intended to be made a bankrupt, is a trader within the meaning of the statute of bankrupts, that he has committed an act of bankruptcy, and that there is a sufficient petitioning creditor's debt: the next things to be attended to (and which are the first proceedings towards making the party a bankrupt) are, the striking of the docket, and the suing out of the commission.

*The Affidavit.]* By stat. 6 Geo. 4. c. 16. § 13. the petitioning creditor shall, before any commission be granted, make an affidavit in writing before a master ordinary or extraordinary in chancery (which shall be filed with the proper officer) of the truth of such his or their respective debt or debts.

This affidavit of the petitioning creditor's debt, states, in general terms, that the party is indebted to the deponent in the sum required to constitute a petitioning creditor's debt, (*see ante*,

p. 49,) without specifying for what, or how it has arisen ; it also states that the party has become bankrupt within the meaning of the statute, and, in the case of country commissions, that the commission is intended to be executed at a particular place, specifying it, and that such place is not within forty miles of London. *See the forms*, ii. p. 1. 2. It must be made by the petitioning creditor himself, sworn before a master in chancery in town, or a master extraordinary in the country, (not being the solicitor to the commission), and filed in the office of the secretary of bankrupts. *Vide supra*. But it was held to be no objection that the affidavit was sworn before the solicitor to the petitioning creditor. *In the matter of Elford*, 2 Glyn & J. 65. Where an insurance company was enabled by statute to commence and prosecute all actions and suits in the name of their secretary, it was holden that this did not authorize them to sue out a commission of bankrupt on the affidavit and petition of their secretary. *Guthrie v. Fisk*, 5 D. & R. 24.

Care must be taken that the bankrupt be described by the name and addition by which he is generally known ; for if there appear to be any fraud or concealment intended in this respect, the Lord Chancellor, upon petition, will supersede the commission. *See Ex p. Stocker*, 1 Glyn & J. 249. *Stevens v. Elizee*, 3 Camp. 256. *Ex p. Horsley*, 2 Mad. 11. *Ex p. Smith*, 2 Rose, 25. *Ex p. Ward*, 1 Rose, 314. *Re Baldwin*, 2 Rose, 20. *Ex p. Schofield*, *Id.* 246. Care must also be taken to name his place of residence correctly ; *see Ex p. Beckworth*, 1 Glyn & J. 20. *Ex p. Smyth*, 1 Glyn & J. 256. But where the bankrupt was described in the commission as he was accustomed to describe himself in carrying on his trade, and according to the popular, though not the most legal description of his residence, the court held it to be a proper description of the bankrupt, and refused to supersede the commission. *Ex p. Wride*, 2 Glyn & J. 99. And if he reside at a different place from that in which he carried on his business when his debts were contracted, it may be prudent to name him as “formerly” or “lately of ———, but now of ——— ;” so, if he carried on his business in two or more places in this country, it may be prudent to name them all. He must be described also as a trader, in such a manner that it may appear upon the face of the affidavit that he is a trader within the meaning of the statute ; *see ante*, p. ; and if there be any uncertainty in the description, add the words “dealer and chapman,” if the party swearing, can conscientiously do so. *see Hale v. Small*, 4 Moor, 415, 8 Taunt. 730.

The affidavit cannot be re-sworn, for the purpose of correcting any error or defect in it ; *Re Rutledge*, 2 Rose, 369 ; but the Lord Chancellor, upon application, under particular cir-

cumstances, will allow the error or defect to be remedied by a supplemental affidavit. *Ex p. Maughan and Smith*, 1 Glyn & J. 365.

*The Bond.*] Also, the petitioning creditor, before any commission can be granted, must, by stat. 6 Geo. 4. c. 16. § 13. give bond to the Lord Chancellor in the penalty of two hundred pounds, to be conditioned for proving his or their debt or debts, as well before the commissioners as upon any trial at law, in case the due issuing forth of the commission be contested, and also for proving the party to have committed an act of bankruptcy at the time of taking out such commission, and to proceed on such commission : but if such debt or debts shall not be really due, or if after such commission taken out it be not proved that the party had committed an act of bankruptcy at the time of the issuing of the commission, and it shall also appear that such commission was taken out fraudulently or maliciously," (*see Ex p. Lane*, 11 Ves. 415) "the Lord Chancellor shall and may, upon petition of the party or parties against whom the commission was so taken out, examine into the same, and order satisfaction to be made to him or them for the damages by him or them sustained; and for the better recovery thereof, may assign such bond or bonds to the party or parties so petitioning, who may sue for the same in his and their name or names. *See the form of the bond*, ii. p. 3. This bond is given by the petitioning creditor who makes the affidavit, *Ex p. Barrow*, 3 Ves. 554, and may be given by him alone, although he may have partners, and the debt be due to the firm. *Ex p. French*, Buck, 457. *Ex p. Hodgkinson*, Coop. 99. and *see Ex p. Blakey*, 1 Glyn & J. 197, or by one of several assignees upon a debt due to their bankrupt, *Ex p. Blakey*, 1 Glyn & J. 197. and where husband and wife are petitioning creditors, the bond is given by the husband alone. *Ramsay v. George*, 1 M. & S. 176. It is usual to have it attested by two witnesses; and in country cases, one of these witnesses is usually the master extraordinary before whom the affidavit is sworn.

Upon this bond being assigned, as above mentioned, the assignee may thereupon sue the obligor, in his own name, in a court of law; *see Ex p. Gayter*, 1 Atk. 144; and the assignment of the bond is deemed, in such action, conclusive evidence of the fraud or malice. *Smithey v. Edmonson*, 3 East, 22. *Smith v. Bromehead*, 7 T. R. 300. and *see Holmes v. Wainwright*, 1 Swanst. 20. This, however, must not be considered as in any manner affecting the party's common law remedy by action on the case, *Brown v. Chapman*, 3 Bur. 1418. *Ex p. Rimene*, 14 Ves. 600. and which of course he has the

option to adopt, without any previous application to the Lord Chancellor.

*The Petition.*] The petition is in the name of the person who has executed the bond above mentioned, or of him and his partners if it appear from the bond and affidavit that the debt is due to him and others. 2 *Cook*. 4. It is directed to the Lord Chancellor; and states the trading, petitioning creditor's debt, and that the party has become bankrupt, and prays his lordship to grant to the petitioner his Majesty's commission, to be directed to such wise, honest and discreet persons as to his lordship shall seem meet. *See the form*, ii. p. 4. When this petition is prepared, the affidavit and bond are annexed to it; the deputy secretary of bankrupts writes at the bottom of it a *fiat*, ordering a commission to issue directed to five commissioners, (naming them,) and this is signed by the Lord Chancellor. *See the form of the fiat*, ii. p. 5.

If two or more persons apply at the same time to strike a docket against the same person and both of them be prepared to sue out a commission forthwith, it shall be determined by lot, which shall sue out the commission; but if one only be prepared to sue it out, the commission shall be issued to him. *Ord. Eld.* 13 April, 1815. *See Hayes's case*, 13 *Ves.* 197. *Ex p. Hardman*, 1 *Jac. & W.* 293. If two or more dockets be struck, the first regular one in the office shall have priority. *Ex p. Stocker*, 1 *Glyn & J.* 249: and it is the practice of the bankrupt office to consider the variation of a letter in the name of the bankrupt, *Ex p. Ward*, 1 *Rose*, 314, or any mistake in the description, *Ex p. Layton*, 6 *Ves.* 434. *Ex p. Beckwith*, 1 *Glyn & J.* 20, to be sufficient to allow a second docket to be struck. But where there is a competition between two creditors for a town or country commission, the Court will grant the one or the other, as may seem most convenient and most beneficial for the creditors. *Ex p. Bowdler*, 1 *Rose*, 48

The petitioning creditor must, within four days after the docket is struck, (*see Ex p. Cooper*, 12 *Ves.* 418. *Re Graham, Buck*, 529. *Nicholl's case*, 19 *Ves.* 616,) order the commission to be sealed at the then next public seal, (*see Ex p. Hyne*, 19 *Ves.* 61.), if there be a public seal within seven days, or at a private seal within eight days, after the striking of the docket, and get it sealed accordingly; otherwise any other person may sue out a commission, without giving him notice thereof. *Ord. Eld.* 13 Apr. 1815. So, if a commission be not bespoke within one calendar month after the docket has been struck,

the docket is then to be considered as expired and of no effect. *Ord. Eld. 28 May, 1819. and see Ex p. Buckley, Buck, 367.*

No docket shall be considered as struck until the same shall be entered in the docket book; to which docket book all solicitors of the Court of Chancery may, during office hours, that is from 10 in the morning till 3 in the afternoon, and from 6 till 8 in the evening, have free access, upon payment of the usual fee of 1s. *Ord. Ersk. 29 Dec. 1806.*

*The Commission.]* By stat. 6 Geo. 4, c. 16. § 12, the Lord Chancellor shall have power, upon petition made to him in writing against any trader having committed any act of bankruptcy, by any creditor or creditors of such trader, by commission under the great seal, to appoint such persons as to him shall seem fit, who shall by virtue of this act and of such commission have full power and authority to take such order and direction with the body of such bankrupt, as herein-after mentioned, as also with all his lands, tenements and hereditaments, both within this realm and abroad, as well copy or customary hold as freehold, which he shall have in his own right before he became bankrupt, as also with all such interest in any such lands, tenements and hereditaments as such bankrupt may lawfully depart withal, and with all his money, fees, offices, annuities, goods, chattels, wares, merchandize, and debts, wheresoever they may be found or known, and to make sale thereof in manner herein-after mentioned, or otherwise order the same for satisfaction and payment of the creditors of the said bankrupt.

This commission is a power or authority, under the great seal, to the commissioners to whom it is directed, to proceed, not only as to the bankrupt and his property, but as to all other persons who by concealment, claim, or otherwise, shall offend touching the premises, and to do and execute all things towards satisfaction and payment of the creditors. *See the form, ii. p. 5.*

It is directed, in cases of commissions to be executed in London, to the several gentlemen in some one of the lists, *ante, p.* ; in country commissions, to two barristers residing at or near the place where the commission is to be executed, as *quorum* commissioners, *Ord. Loughb. 12 Aug. 1800*, and to three attornies, all nominated by the solicitor to the commission, (*ante, p. 7.*) he certifying at the same time that none of the persons so nominated are creditors of the intended bankrupt. *Ord. Eld. 25 July 1817.* Or, if he wish to have the commission directed to five attornies, and will make affidavit “*that the deponent verily believes there are not any two barristers who will be*

willing to attend at" [specifying the place where it is intended the commission shall be executed,] "or at any convenient place in the neighbourhood thereof, to act under the said commission, for the fees allowed by the statute," the secretary of bankrupts may prepare a *fiat* accordingly, without any other application made to the court. *Ord. Eld.* 15 Aug. 1821.

A commission until it is acted upon, as by being opened, is considered as an escrow; *Fisher's case*, 13 *Ves.* 191, but after it has been opened, the chancellor has in many instances refused to order it to be amended and resealed, as altering a deed without a new stamp, would be to defeat the revenue laws, *Ex p. Thompson*, 9 *Ves.* 297. *Fisher's case*, 10 *Ves.* 190. *Burrow's case*, 10 *Ves.* 286. *Ex p. Thwaites*, 13 *Ves.* 325. *In the matter of Rutledge*, 2 *Rose* 369. But the 6 Geo. 4. c. 16. s. 98, by repealing the stamp duties on proceedings in bankruptcy seems to have obviated this objection, and the chancellor now will order a commission to be amended and resealed either before or after it has been opened, to supply a defect of form, as a mistake in a name. *Ex p. Cheesewright*, 18 *Ves.* 480, 1 *Rose*, 228. *Ex p. Sutton*, 1 *Rose*, 85. *Ex p. Guthrie*, 1 *Glyn & J.* 245. *In the matter of Barber*, 2 *Glyn & J.* 81. But not to alter the teste for the purpose of admitting the proof of a subsequent act of bankruptcy, *Ex p. Thwaites*. *Ex p. Cheesewright*, *supra*. Nor even to correct the wrong spelling of the bankrupt's name, if the affidavit or bond of the petitioning creditor contains a similar error; in that case, a new docket is necessary. *In the matter of Rutledge*, 2 *Rose*, 369. And where the petitioning creditor's debt, was a debt to three persons as executors, and in the bond, the petition for the commission and the commission itself, the debt appeared as due to one person only, and the bankrupt had obtained a verdict in an action at law impeaching the commission, the Lord Chancellor refused to order the commission to be amended. *Ex p. Forshaw*, 1 *Glyn & J.* 368.

Where of the five commissioners in a list, one was dead, and another out of the country, and one of the remaining three being of opinion, erroneously, that the petitioning creditor's debt was not sufficient to sustain the commission, the commissioners did not proceed to adjudication; the Lord Chancellor, on petition, ordered that the petitioning creditor should be at liberty to sue out another commission, upon the same docket papers, to be directed to the list of commissioners next in rotation which was full. *Ex p. Stead*, 1 *Glyn & J.* 301.

By stat. 6 Geo. 4. c. 16. § 26. No commission shall abate by reason of a demise of the crown; and if, by reason of the death of commissioners, (*see Ex p. Hobbes, Buck*, 134,) or for



any other cause, it become necessary, any commission may be renewed, but only half the fees usually paid upon obtaining commissions shall be paid for the same; and if any bankrupt shall die after adjudication, the commissioners may proceed in the commission as they might have done if he were living. In *Ex p. Beale*, (2 V. & B. 29.) it was holden that if the bankrupt die before adjudication, the commission cannot be proceeded in. See also 15 Ves. 494. *Twogood v. Hankey*, Buck, 65. See the forms in cases of a renewed commission, post, Book II. 10. Under a renewed commission, the commissioners proceed from that stage of the proceedings at which the former commissioners left off.

If London commissions be not prosecuted within fourteen days, or country commissions within twenty-eight days, after the respective dates thereof, they are supersedeable; *Ord. Loughb.* 26 June, 1793, see post; unless from circumstances it was impossible to prosecute them within the time. *Ex p. Freeman*, 1 Rose, 380. and see *Re Hayes*, 1 Glyn & J. 255. The commission is deemed prosecuted, where the advertisement declaring the bankruptcy had appeared in the Gazette, *Ex p. Leicester*, 6 Ves. 429. *Ex p. Layton*, *Ex p. Hardwicke*, 6 Ves. 434. and see *Ex p. Henderson*, 2 Rose, 190. *Ex p. Mavor*, 19 Ves. 539, or, under circumstances, if the party be declared a bankrupt, *Ex p. Ellis*, 7 Ves. 135. *Ex p. Soppit*, Buck, 81, within the limited time.

And a person, who has thus sued out a commission, and has failed to prosecute it within the time above limited for that purpose, shall not be allowed to sue out a second commission, without the special leave of the court. *Ord.* 6 Dec. 1788.

And lastly, where a commission has issued, and the party has not been found a bankrupt, in case another commission be issued against the same person, whether at the suit of the same petitioning creditor or not, it shall be directed to the same commissioners to whom the former commission was directed. *Ord. Apsley*, 12 Feb. 1774. And no second commission can be sent to the Lord Chancellor, without a note of what has passed under the first. *Ex p. Freeman*, 1 Rose, 12. A commission against an uncertificated bankrupt, where there had been an assignment under the prior commission, is void at law; *Ex p. Proudfoot*, 1 Atk. 252. *Ex p. Brown*, 2 Ves. J. 67. *Ex p. Martin*, 15 Ves. 114. *Everett v. Backhouse*, 10 Ves. 94; but if there have been no assignment, the existence of a prior commission will not invalidate the subsequent one, *Warner v. Barber*, 2 Moore, 71; 1 Taun. 176, and, under circumstances, the court has refused to supersede the second commission. *Ex p. Lees*, 16 Ves. 472. *Ex p. Crew*, *Id.* 236. A commission against

one who had been twice before declared bankrupt, and had not paid fifteen shillings under the second commission, was held not void, but voidable only. *Guthrie v. Fiske*, 5 Dow. & R. 24.

One effect of a creditor suing out a commission of bankrupt against his debtor is, that he thereby elects to proceed for his debt under the commission, and not by action at law, and relinquishes his proceedings by action, if he have taken any; *Ex p. Wilson*, 1 Atk. 152. *Ex p. Ward*, Id. 153. *Ex p. Lewes*, Id. 154. *Ex p. Prowse*, 1 Glyn & J. 92; in such a case the Lord Chancellor, upon petition, will enjoin the creditor from proceeding in the action, if necessary, see *Ex p. Bozannet*, 1 Rose, 181. *Ex p. Handenberg*, Id. 204, or discharge the debtor if he be in custody; but a court of law will not interfere in such a case. 1 B. & P. 302.

*Auxiliary Commission.*] By stat. 6 Geo. 4. c. 16. § 20. It shall be lawful for the Lord Chancellor to direct an auxiliary commission to issue for proof of debts under twenty pounds, and for the examination of witnesses on oath, or for either of such purposes; and the commissioners in every such commission issued for the examination of witnesses shall possess the same powers to compel the attendance of and to examine witnesses, and to enforce both obedience to such examination, and the production of books, deeds, papers, writings, and other documents, as are possessed by the commissioners in any original commission: provided always, that all such examinations of witnesses under such commissions shall be taken down in writing, and shall be annexed to and form part of the original commission. See *Ex p. Perry*, and *Ex p. Scott*, 1 Rose, 12, where the like was done, prior to this statute The Lord Chancellor never grants such commissions for the examination of the bankrupt. *Re —, Buck*, 523.

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## SECTION V.

### *Opening the Commission and declaring the Party a Bankrupt.*

This section is intended to comprise the business usually done at the first private meeting, namely, the swearing of the commissioners, the summoning of witnesses, proofs of the petitioning creditor's debt, trading and act of bankruptcy, the adjudi-

cation, the advertisement in the Gazette, the summons of the bankrupt, and the bankrupt's surrender.

*Commissioners' oath.*] By stat. 6 Geo. 4. c. 16. § 21. no commissioner shall be capable of acting in the execution of any of the powers and authorities given by this act, (except the power hereby given of administering the oath next hereinafter mentioned,) until he shall have taken an oath in the presence of one or more of the said commissioners, to the effect following, (that is to say :)

*" I, A. B. do swear that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me as a commissioner, in a commission of bankruptcy against —, and that without favour or affection, prejudice or malice. So help me God."*

Which oath the commissioners are hereby empowered and required to administer one to another in the same commission named ; and they shall enter and keep a memorial or memorials thereof, signed by them respectively, among the proceedings under each commission. *See the form of this Memorial or Memorandum, ii. p. 7.*

Previously to the administering of this oath, the commission is produced by the solicitor, and opened by one of the commissioners.

The above oath is, of course, administered to the commissioners present at the first private meeting ; and if, at any subsequent meeting, a commissioner attend for the first time, one of the commissioners must administer this oath to him, before he takes any part in the proceedings. *See the form of the Memorandum in such case, ii. p. 26.*

*Summons for witnesses.*] By stat. 6 Geo. 4. c. 16. § 24. it shall be lawful for the commissioners, after they shall have taken such oath as aforesaid, by writing under their hands, to summon before them any person whom they shall believe capable of giving any information concerning the trading of or any act or acts of bankruptcy committed by the person or persons against whom such commission is issued, and also to require any person so summoned to produce any books, papers, deeds and writings, and other documents in the custody, possession or power of such person, which may appear to the said commissioners to be necessary to establish such trading or act or acts of bankruptcy ; and it shall be lawful for the said commissioners to examine any such person upon oath, by word of mouth, or interrogatories in writing, concerning the trade of or any act or acts of bankruptcy

committed by the person or persons against whom such commission shall have issued ; and every such person so summoned shall incur such danger or penalty for not coming before the commissioners, or for refusing to be sworn and examined, or for not fully answering to the satisfaction of the said commissioners, or for refusing to sign or subscribe his examination, or for refusing to produce, or for not producing any such book, paper, deed, writing or document, as is hereby provided as to persons summoned after the adjudication of bankruptcy. *See post, sect. 12, and see a form of the Summons, ii. p. 16.*

And by sect. 35, every witness summoned to attend before the commissioners, shall have his necessary expenses tendered to him, in like manner as is now by law required upon service of a subpoena to a witness in an action at law. *See 1 Arch. Pr. B. R.*

And here it may be necessary to observe, that every witness examined before the commissioners must be a competent witness, with reference to the matter he is called upon to prove, according to the rules of evidence established in the courts of common law. Proof of the petitioning creditor's debt is the only exception to this ; that being proved before the commissioners by the petitioning creditor himself. The bankrupt cannot be called upon, nor is he admissible as a witness, to prove the petitioning creditor's debt, the trading or act of bankruptcy. *Chapman v. Gardner, 2 H. Bl. 279, and n. Field v. Curtis, 2 Str. 829. Hoffman v. Pitt, 5 Esp. 22. And see post, sect. 18.* Nor is a creditor a competent witness for such a purpose ; *Per Lord Eldon, 1 Rose, 392, n. Adams v. Malken, 3 Camp. 543. Crooke v. Edwards, 2 Starkie, 302. Ex p. Osborne, 2 V. & B. 177 ; nor can he be rendered competent, except by selling his debt. Heath v. Hall, 4 Taunt. 326. Granger v. Furlong, 2 W. Bl. 1273.* What the bankrupt said at the time of his doing an act, alleged as the act of bankruptcy, is properly receivable in evidence, as being part of the *res gesta*, and as evincing the intent with which the act was committed. *Ambrose v. Clindon, Hardw. 267. Marsh v. Meager, 1 Stark. 353. And see Bateman v. Bailey, 5 T. R. 512. Ex p. Hague, 1 Rose, 150.*

Although this power of summoning witnesses is by this act, and was by one of the repealed acts, to be exercised by the commissioners after they had qualified, yet in practice it is usually done previously, in order to have the witnesses in attendance at the private meeting. How far the witness could be punished, in such a case, for non-attendance, is another matter. In many cases, you may get the witness to attend without summons.

*Proof of the petitioning creditor's debt.*] By an order of Lord Loughborough, dated 26th Nov. 1798, no commission of bankrupt shall be acted upon by the commissioners to whom the same shall be directed, nor shall the party be declared to be a bankrupt under and by virtue of the same, unless the commissioners do have before them the creditor or creditors petitioning for such commission of bankrupt, and do examine into the nature and consideration of the debt or debts due to them ;” and the commissioners, “ before they declare the party to be a bankrupt, shall cause to be entered on their proceedings, a deposition of such petitioning creditor or creditors, stating the nature and amount of the debt or debts due to such creditor or creditors, and how and for what consideration the same arose, and also the particular time or times the same accrued due.” And this personal attendance of the petitioning creditor will not be dispensed with, on any ground of inconvenience to him, or the like. *Ex p. Williamson*, 1 Jac. & W. 240. But where the petitioning creditor died between the time of striking the docket and the opening of the commission, his executors, upon petition, were allowed to make the necessary deposition of the debt. *Ex p. Winwood*, 1 Glyn & J. 252. See the form of the deposition, ii. p. 8.

Also by Lord Apsley's order, 12 Eeb. 1774, the commissioners are desired to be careful in examining into the reality of the debts of petitioning creditors. They are also desired to inquire if the bankrupt was concerned in any partnership at the time of his bankruptcy ; and whether he had ever obtained a certificate under any former commission, or been discharged under any act for the relief of insolvent debtors : and if such be the case, the commissioners shall certify the same to the Lord Chancellor, and transmit such certificate to the secretary of bankrupts, at the same time that they make their certificate of conformity.

*Proof of the trading.*] This must be proved by some person, who can swear to the fact from his own knowledge. And he must attend before the commissioners for that purpose ; unless, perhaps, under very particular circumstances, the Lord Chancellor should dispense with his personal attendance, and allow of a proof by affidavit of the trading. *Vide infra*. See the form of the Deposition as to the trading, ii. 8.

*Proof of the act of bankruptcy.*] The act of bankruptcy is proved by a witness or witnesses, who attend before the commissioners and make depositions of the fact ; and this personal attendance will not be dispensed with by the commissioners,

without an order for that purpose from the Chancellor. *See In the matter of Wood*, 1 *Rose*, 298. And it is extremely doubtful if the Lord Chancellor would make such an order under any circumstances, if opposed. *See Ex p. Rowe*, 2 *Rose*, 339.

It must be proved by the ordinary evidence that would be required of the same facts upon a trial at law. Therefore, where the act of bankruptcy consists of a conveyance of the party's property, the deed or other instrument must be proved by the subscribing witness, if there be one, or by proof of the hand-writing of the party, if there be not. *See 1 Arch. Pr. B. R.* 161, &c. *Arch. Pl. & Ev.* 377, &c. *Goss v. Tracy*, 1 *P. Wms.* 189. *Bernett v. Taylor*, 9 *Ves.* 381. Or if it consist of imprisonment, for instance, in the custody of the Marshal, not only the commitment must be proved, (and which may be proved from the prison books, or a certificate from the clerk of the papers, with a deposition of its being signed by him, which is the usual proof,) but the committitur itself should be produced, to shew the cause of his commitment. *See Salte v. Thomas*, 3 *B. & P.* 188.

In all cases where the intent with which an act is done constitutes a part of the act of bankruptcy, the intent must be stated either expressly in the deposition, or circumstances from which it may be fairly implied. *See Ex p. Herbert*, 2 *Ves. & B.* 399, *Ex p. Osborne*, 1 *Rose*, 387. And although the act of bankruptcy must appear to have been committed in England, or by remaining out of it, yet evidence of the intent may be derived from facts which occurred in a foreign country. *See Ex p. Hague*, 1 *Rose*, 150.

*The adjudication.*] By stat. 6 Geo. 4. c. 16. § 24, the commissioners, upon proof made before them of the petitioning creditor's debt or debts, and of the trading and act or acts of bankruptcy of the person or persons against whom such commission is issued, shall thereupon adjudge such person or persons bankrupt. Whether the proofs offered of these matters be sufficient, is a matter entirely for the judgment of the commissioners. *See Ex p. Simpson*, 1 *Atk.* 71. *Ex p. Goodere*, *Id.* 78. *Ex p. Groome*, *Id.* 119. And see *ante*, p. 19, 20.

*Provisional assignment.*] By stat. 6 Geo. 4. c. 16. § 45, it shall be lawful for the commissioners, as often as they shall think fit, by writing under their hands, to appoint one or more person or persons an assignee or assignees of the bankrupt's real and personal estate, or of any part thereof, which assignee or assignees shall or may be removed at the meeting of the creditors for the choice of assignees, if they shall think fit; and such as-

signee or assignees so removed, shall deliver up and assign all the estate of the bankrupt, come to his or their possession, to the assignees so chosen as hereinafter mentioned; and all the estate of the bankrupt, which shall be so delivered up and assigned, shall be as effectually and legally vested in the assignees so chosen as aforesaid, as if the first assignment had been made to them by the commissioners; and if such first assignee or assignees shall not, within ten days after notice given of the said choice of assignees, and of their consent to accept such assignment, signified to the first assignee or assignees by writing under their hands, make such assignment and delivery as aforesaid, every such assignee shall forfeit two hundred pounds. *See the form of the provisional assignment, ii. p. 17; and of the provisional bargain and sale, ii. p. 19.*

A provisional assignment is usually made where an extent is apprehended, or where the bankrupt's business is of such a nature as to require it to be continued and carried on, or to require an immediate interference in it for other reasons. And the commissioners should state on the face of the proceedings their reason for making such assignment. *Ex p. Norris, 1 Glyn & J. 237.* A provisional bargain and sale is also executed, if the bankrupt have real property, and an extent is apprehended. But it is better, perhaps, not to include copyholds in it; for copyholds cannot be affected by the extent; and this bargain and sale, and the bargain and sale again to the assignees, would subject the property to a double fine to the lord. *See Drury v. Man, 1 Atk. 95.*

If the provisional assignee die before the choice of assignees, his heir, though an infant, will be deemed a trustee of the real estate, within the stat. 7 Ann. c. 19. *Ex p. Carter, 5 Mad. 81.* But where the provisional assignee died insolvent, and no person administered to his estate, the Lord Chancellor ordered the provisional assignment to be cancelled, and directed the commissioners to execute a new assignment. *Ex p. Bury, 1 Cook, 308.*

*Advertisement in the Gazette.*] By stat. 6 Geo. 4. c. 16. § 25. the commissioners, after they have so adjudged as aforesaid, shall forthwith cause notice of such adjudication to be given in the *London Gazette*, and shall thereby appoint three public meetings for the bankrupt to surrender and conform, the last of which meetings shall be on the forty-second day hereby limited for such surrender. *See the form of the advertisement, ii. p. 25.* *See Ex p. Soppit, Buck, 81.* The Lord Chancellor, however, upon petition, may order the publication of this advertisement in the *Gazette* to be suspended, if there be a fair doubt as to the

bankruptcy, *Ex p. Preston*, 1 *Rose*, 259. *Ex p. Fletcher*, 1 *Rose*, 336. *Ex p. Foster*, 17 *Ves.* 414. *And see* 1 *Ves. & B.* 350; but the court has no right to prevent the petitioning creditor from proceeding to the publication, unless upon the proceedings there is a clear defect in the requisites to support the commission. *Ex p. Ainsworth*, 2 *Glyn & J.* 89; but, with consent of the petitioning creditor, the advertisement was suspended, upon a strong probability that the commission would be forthwith superseded by consent of the creditors. *Ex p. Ogilby*, 1 *Glyn & J.* 250.

*Summons of the bankrupt.]* A notice in writing of his having been declared a bankrupt, must be left for the bankrupt at his usual place of abode, or served upon him personally in case he be in prison, otherwise he cannot be punished for not surrendering. *see* 6 *Geo. 4. c. 16. § 112, post, Sect. 11. And see the form of the notice*, ii. p. 21. There is a memorandum of the bankrupt's having surrendered himself, printed on the back of this notice or form, which is filled up and signed by the commissioners, upon his surrendering, and which operates as a protection to him until after his final examination. *See the form*, ii. p. 23.

*Bankrupt's surrender.]* If the bankrupt be apprehensive of an arrest, and wish on that account to surrender himself, in order to be protected, he may surrender at the private meeting if he know of it. *See Ex p. Wood*, 1 *Rose*, 46; but he is not bound to surrender till the last public meeting. *Ex p. Nicholls*, 2 *Glyn & J.* 102.

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## SECTION VI.

### *Seizure of the Property by the Messenger.*

*In England.]* By stat. 6 *Geo. 4. c. 16. § 27*, it shall be lawful for any person appointed by the commissioners, by their warrant under their hands and seals, to break open any house, chamber, shop, warehouse, door, trunk or chest of any bankrupt, where such bankrupt or any of his property shall be reputed to be, and seize upon the body or property of such bankrupt; and if the bankrupt be in prison or in custody, it shall be lawful for the person so appointed as aforesaid, to seize any property (his necessary wearing apparel only excepted) in the custody or pos-



session of such bankrupt, or of any other person, in any prison or place where such bankrupt is in custody. *See the form of the warrant*, ii. p. 22.

If the messenger seize goods under the warrant, and abandon them, it has been doubted whether he can again seize them under the same warrant. *See Ex p. Page*, 1 *Rose*, 2. 17. *Ves.* 59.

*In Ireland.*] By stat. 6 Geo. 4. c. 16. §. 28, it shall be lawful for the person so appointed by the commissioners as aforesaid, to break open any house, chamber, shop, warehouse, door, trunk, or chest of such bankrupt in Ireland, where any of the property of such bankrupt shall be reputed to be, and seize the same; provided such warrant as aforesaid shall have been verified upon oath by the attorney or solicitor suing out the commission before the mayor or other chief magistrate of the city, borough, or town corporate, where or near to which the said commission is executed, and verified under the common seal thereof, or the seal of the office of such mayor or other magistrate; and provided also, that the person thereby appointed shall, before a justice of peace residing in the county where such property shall be reputed to be, depose upon oath that he is the person named in such warrant.

*In Scotland.*] By stat. 6 Geo. 4. c. 16. § 30, if in the execution of any warrant of seizure so granted by the commissioners as aforesaid, it shall be necessary to break open any house, chamber, shop, warehouse, door, trunk or chest of such bankrupt in Scotland, where any of the property of such bankrupt shall be reputed to be, or to seize and get possession of such property; such warrant, after having been verified upon oath as aforesaid, may be backed or indorsed with the name of a judge ordinary or justice of the peace in Scotland, who are hereby required, within their respective jurisdictions, to back or indorse the same; and such warrant so indorsed shall be sufficient authority to the person bringing such warrant, and to all officers of the law in Scotland, to execute the same within the county or burgh wherein it is so indorsed, and in virtue thereof to break open the house, chamber, shop, warehouse, door, trunk or chest of such bankrupt, and to seize and take possession of such property, to be distributed under the said commission, or otherwise dealt with according to law.

*Search Warrant.*] By stat. 6 Geo. 4. c. 16. § 29, in all cases where it shall be made to appear to the satisfaction of any justice of peace in England or Ireland, that there is reason to suspect

and believe that property of the bankrupt is concealed in any house, premises, or other place not belonging to such bankrupt, such justice of peace is hereby directed and authorized to grant a search warrant to the person so deputed by the commissioners as aforesaid, and it shall be lawful for such person to execute the same in like manner, and such person shall be entitled to the same protection, as is allowed by law in execution of a search warrant for property reputed to be stolen or concealed. *See 5 Burn's J. tit. "Search Warrant."* But the warrant is not valid, if granted to any one besides the messenger under the commission *Sly v. Stevenson 2 Car. & P. 464.*

If the goods be in the possession of a bailee, who has a lien upon them, that lien should be satisfied before the goods are removed. *See 2 Eq. Ca. Abr. 98.*

*Obstructing the messenger.]* Obstructing the messenger in the execution of the commissioner's warrant, by force or by threats, or using contemptuous words with reference to it, is a contempt of the Great Seal, and punishable as such; *see Ex p. Page, 17 Ves. 59. Ex p. Dixon, 8 Ves. 104. Ex p. Titner, 1 Atk. 136. Ex p Craggs, 1 Rose, 25;* if the property seized do not belong to the bankrupt, or if the messenger otherwise act illegally, the owner or party injured should resort to his legal remedy. *As to actions against the messenger, see ante, p. 13.*

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## SECTION VII.

### Proof of Debts.

*Debts legal or equitable.]* The general rule upon this subject is, that all debts may be proved under a commission, for which, if payable at the time, the creditor might have had his remedy against the bankrupt, either in law, in equity, or otherwise, in his own name or in the name of another.

It must be a debt, of an amount either actually ascertained, or which may readily be ascertained by computation without the intervention of a jury; as, for goods sold or work and labour done (whether for a price agreed upon or not, *see Johnson v. Spiller, Dougl. 167*), for money lent, money laid out, and expended, money had and received, (*see Wright v. Hunter, 1 East, 20*), or on a bill of exchange or promissory note, or for taxes or rates due by the bankrupt *Lloyd v. Heathcotte, 2 B. & B. 388*, or received by the bankrupt as collector, &c. *R. v. Tacker, 5 M. & S. 508. Ex p. Exleigh, 6 Ves. 811. Ex p. Child, 1 Atk. 111, or*

the like ; and not simply a claim sounding merely in damages, and those damages unliquidated, (*see Ex p. Mumford*, 15 *Ves.* 289. *Ex p. Mare*, 8 *Ves.* 335), as for breach of an agreement to deliver goods for mesne profits, *Goodtitle v. North*, 2 *Doug.* 583, or for a tort, or in trover, *Parker v. Norton*, 6 *T. R.* 695. *Longford v. Ellis*, 1 *H. Bl.* 29, or for breach of covenant (unless it be a covenant for the payment of money), *Goodtitle v. North*, 2 *Doug.* 583. *Bannister v. Scott*, 6 *T. R.* 489. *Charlton v. King*, 4 *T. R.* 136. *Hamond v. Toulmin*, 7 *T. R.* 612, or the like, even although such covenant, &c. be secured by a penalty. 3 *Wils.* 270. And it must be a debt due from the bankrupt ; therefore, for money paid to the assignees of a bankrupt by mistake, the party cannot prove upon the estate, but should have his remedy against the assignees, by action. *Malcolm v. Fullarton*, 2 *T. R.* 645, And where one person purchased an annuity from another, through the agency of the bankrupts, and the consideration money was received by the bankrupts as agents for vendor of the annuity, and placed by them to his account, and they afterwards became bankrupts, held, that the purchaser could not prove the consideration paid for the annuities, under commission as a debt due from the bankrupts, unless he could prove that the grant of the annuities was merely colorable, for the purpose of obtaining the money in payment of the debt, due from the vendor to the bankrupts. *Ex p. Shaw* 2 *Glyn & J.* 106. And although an actually existing debt be liable to be defeated subsequently by a contingency, it is proveable. *Staines v. Plank*, 8 *T. R.* 389. *Ex p. Groome*, 1 *Atk.* 117. As to the amount to be proved it may be observed, that if before the bankruptcy of his debtor, a creditor agree to take less than his debt, provided it be paid before a certain day, and default be made in payment, he may prove for the whole, *Ex p. Bennett*, 2 *Atk.* 528. *Sewel v. Musson*, 1 *Vern.* 210. *Heathcotte v. Cruikshanks*, 2 *T. R.* 24. *Ex p. Peele*, 1 *Rose*, 435, less the amount of any instalment he may have received ; *Ex p. Vere*, 1 *Rose*, 281, 19 *Ves.* 93 ; but where a person sells goods for a certain price, with discount for prompt payment, it seems he will be allowed to prove only for the price, less the discount, *Ex p. Pigou*, 3, *Mad.* 136. *Ex p. Ainsworth*, *Cook*, 220.

It must be a debt for which the creditor has a remedy ; and therefore a debt barred by the statute of limitations cannot be proved, *Ex p. Dewdney*, 15 *Ves.* 479. *Ex p. Roffey*, 2 *Rose*, 245. But the six years must have elapsed before the commission has issued, or the debt will not be barred. *Ex p. Ross*, 2 *Glyn & J.* 46. So also a debt void for usury, *Ex p. Thompson*, 1 *Atk.* 125. *Ex p. Mather*, 3 *Ves.* 372. *Ex p. Skip*, 2 *Ves.* 489, and *see Ex p. Scrivener*, 3 *V. & B.* 14, or arising from illegal trade, *Ex p. Schmalings*, *Buck*,

93, or from any other illegal consideration, *see Carman v. Bryce*, 3 B. & A. 179, or the debt of an alien enemy, *Ex p. Bousmaker*, 13 Ves. 71, or the like, cannot be proved, because the creditor has no remedy for the recovery of it : so, for the same reason, a bill of exchange cannot be proved on the estate of an indorser or drawer, in cases where, by reason of the creditor's not having given due notice of non-payment or non-acceptance, or having given time to the acceptor, or the bankrupt not having indorsed it, or the like, he could not maintain an action upon it against the bankrupt. *Vide infra. Ex p. Gifford*, 6 Ves. 805. *Ex p. Wilson*, 11 Ves. 410. *Ex p. Slater*, 6 Ves. 146. *Ex p. Smith*, 3 Bro 1. But a debt may be proved against the estate of an executor, if he have acknowledged assets ; 1 Sch. & Lef. 173 ; against a trustee who has applied the trust money to his own use, for the party has his remedy in equity against him ; *Ex p. Fairchild*, 1 Glyn & J. 221. *Ex p. Watson*, 2 V. & B. 414. *Ex p. Shakeshaft*, 3 Bro. 196. and *see Keble v. Thompson*, 3 Bro. 111 ; against an executor for a legacy, for the legatee has a remedy in a spiritual court. *Walcot v. Hall*. 2 Bro. 305. and *see Ex p. Moody*, 2 Rose, 413. So, upon an order in chancery for the payment of money the party entitled to it may prove, having a remedy for it in chancery. *Wall v. Atkinson*, 2 Rose, 196. and *see 1 Sch. & Lef.* 48. 3 Ves. & B. 31. 2 Ves. Sen. 249. So a person who had agreed to sell land to the bankrupt before his bankruptcy, will be allowed, upon petition, to re-sell the land, and prove upon the bankrupt's estate for the difference ; because in equity he would have his remedy upon the agreement. *Bowles v. Rogers, Cook*, 146. *Ex p. Hunter*, 6 Ves. 94.

And whether he might have that remedy in his own name or in the name of another, is immaterial ; therefore either the assignee of a chose in action, (the assignee of a bond for instance, *Ex p. Child*, 1 Atk. 111. *Vide infra*,) or the person originally entitled to it, may prove it under a commission, although, if he had sued upon it, he must have done so in the name of the obligee or person who assigned it to him. In this and other respects above mentioned, it will be perceived that there is a material difference between a petitioning creditor's debt, and debts which may be proved under a commission.

*When due and payable.]* A debt is said to be due the instant it has existence as a debt ; it may be payable at a future time. As to debts proveable under a commission, the general rule is, that the debt must have been due, at the time of the act of bankruptcy ; *Bamford v. Burrell*, 2 B. & P. 1 ; and therefore where school-money was payable half-yearly, and the half-year did not expire until a few days after the act of bankruptcy, it was holden that it could not be proved ; *Parslowe v. Dearlove*, 4 East, 438,

5 *Esp.* 78; so, where a remainderman joined in mortgaging his estate, for the debt of the tenant for life, and the tenant for life became bankrupt before payment, it was holden that the remainderman could not prove upon the estate, not being damnified at the time of the bankruptcy; *Kittier v. Raines*, *Cox.* 105; so where after bankruptcy and before certificate the bankrupt indorsed two notes to one of his creditors, it was holden that the bankrupt's certificate was no bar to an action on these notes, or, in other words, that these notes could not be proved under the commission, *Brix v. Braham*, 1 *Bing.* 281. and see *Birch v. Sharland*, 1 *T. R.* 715. But by stat. 6 *Geo.* 4. c. 16 § 47, "every person with whom any bankrupt shall have really and *bonâ fide* contracted any debt or demand, (see *Robinson v. Vale*, 4 *D. & R.* 432, 2 *B. & C.* 762) before the issuing the commission against him, shall, notwithstanding any prior act of bankruptcy committed by such bankrupt, be admitted to prove the same, and be a creditor under such commission, as if no such act of bankruptcy had been committed, provided such person had not, at the time the same was contracted, notice of any act of bankruptcy, by such bankrupt committed." That is to say, every debt or demand arising *bonâ fide* before the issuing of the commission, and without knowledge of any act of bankruptcy previously committed may be proved; but this does not prevent a creditor from proving a debt constructed by him after an act of bankruptcy of which he had notice, if it were constructed previously to that act of bankruptcy on which the commission is founded. see *Ex p. Bownes*, 2 *M. & S.* 479. There is no objection, also, to the debt's being contracted after the bankrupt had left off trade. *Meggott v. Mills*, 1 *L. Raym.* 286.

Formerly, also, the debt must not only have been due, but also payable, before the act of bankruptcy. This however, was altered by two of the repealed statutes, (7 *Geo.* 1. c. 31 § 1. and 49 *Geo.* 3. c. 121. § 9); and now, by stat. 6 *Geo.* 4. c. 16. § 51, "any person who shall have given credit to the bankrupt upon valuable consideration for any money or other matter or thing whatsoever, which shall not have become payable when such bankrupt committed an act of bankruptcy, and whether such credit shall have been given upon any bill, bond, note, or other negotiable security or not, shall be entitled to prove such debt, bill, bond, note, or other security, as if the same was payable presently, and receive dividends equally with the other creditors, deducting only thereout a rebate of interest for what he shall so receive, at the rate of five per cent., to be computed, from the declaration of a dividend to the time such debt would have become payable, according to the terms upon which it was contracted." See *Ex p. Pigou*, 3 *Mad.* 136. If goods be sold,

to be paid for by a bill at four months, and no bill be given, this debt may be proved under the commission before the expiration of the four months. *Cothay v. Murray*, 1 Camp. 335.

**Covenants.]** A covenant to pay a certain sum of money at all events at a certain time, may be proved, whether that time be before or after the bankruptcy; if after, it is subject to a rebate of interest. *Charlton v. King*, 4 T. R. 156. *Vide supra*. But it has been decided that a covenant to pay a sum of money on demand, if no demand or request to pay the money have been made before the bankruptcy, cannot be proved; *Ex p. Campbell* 16 Ves. 248; and it is quite clear that there can be no proof under a commission upon a covenant to do a thing, not being the payment of money, such as to build houses, or the like, even although the covenant were broken before the act of bankruptcy. *Bannister v. Scott*, 6 T. R. 489. And even in the case of a covenant for the payment of money, if the consideration for the money arise after the bankruptcy, the amount cannot be proved under the bankruptcy; for in that case it is not *debitum in præ-senti*. See *Millen v. Whittenbury*, 1 Camp. 428. How far the bankrupt's certificate is a bar to an action on such covenants, will be treated of in another part of this work.

**Bonds.]** Bonds conditioned for the payment of a certain sum of money, upon a day or days certain, may be proved under the commission, whether the day or days of payment be before or after the act of bankruptcy, deducting, if payable after, a rebate of interest. see 6 Geo. 4. c. 16. §. 51. *supra*. and see *Ex p. Fisher*, 3 Mad. 159. *Ex p. Rowlat*, 2 Rose, 416. *Ex p. Cottrel*, Cowp. 742. *Brooks v. Lloyd*, 1 T. R. 17. *Ex p. Winchester*, 1 Atk. 116. *Davies*, 530. So, if the principal be payable on demand, and interest have been paid, the bond is proveable, even although there have been no demand of payment previously to the act of bankruptcy. *Ex p. Spurling*, Cook, 169. But where a bond was conditioned for the payment of money after the death of the obligee, and of the interest during his life, on certain days, or within twenty days next after the demand; the obligor became bankrupt, and interest was then due, but no demand had been made of it: it was holden that there had been no forfeiture of the bond, and therefore that it could not be proved under the commission. *Winter v. Mouseley*, 2 B. & A. 802.

Bonds to replace stock on or before a given day, may be proved, if by a breach of any of the conditions of them they be forfeited before the bankruptcy; *Ex p. Leitch*, Cook, 171; see *Ex p. Coming*, 9 Ves. 115. *Parker v. Ramsbottom*. 5 D. & R. 138; otherwise not. *Ex p. King*, 8 Ves. 334. The sum to be proved, consists of the amount of the arrears of dividend, and the value

of the stock ; and the value of the stock is calculated according to the price of it at the date of the commission, if the condition of the bond be to replace it generally ; or if a time be limited for replacing it by the condition, then according to the price of such stock at that time. *Ex p. Day*, 7 Ves. 301.

A bond given by a principal to his surety, even although forfeited before the bankruptcy of the obligor, cannot be proved under a commission against him, until after payment by the surety ; *Ex p. Findon*, Cook, 170. *Ex p. Brown*, *id.*, overruling *Toussaint v. Martinant*, 2 T.R. 100. and see 7 T.R. 97. 2 T.R. 640 ; but where such a bond is forfeited before bankruptcy, it entitles the surety to prove payments made subsequently as well as previously to the bankruptcy. *Ex p. Cockshot*, Cook, 170. *Young v. Taylor*, 8 Taunt. 315, 2 Moor, 326, 3 B. & A. 521. *Vide post.* So, bonds to indemnify cannot be proved, unless the obligee be actually damnified by having been obliged to pay, &c. *Young v. Taylor*, 8 Taunt. 315, 2 Moor, 326, 3 B. & A. 521. And therefore where the obligor in a bastardy bond, became bankrupt and obtained his certificate, it was holden that his certificate was no bar to an action on it by the parish officers, for expenses incurred by them in the maintenance of the child subsequently to the bankruptcy. *Overseers of St. Martin v. Warren*, 1 B. & A. 491. As to bonds given to secure annuities, *vide post.*

A mere voluntary bond, which has been given without any consideration, may be proved under a commission ; but the payment of it shall be deferred until after payment of the other debts, and then it shall be paid out of the surplus. *Assignees of Gardner v. Skinner*, 2 Sch. & L. 228. But a bond given for the arrears of a voluntary bond, may be proved, and dividends received upon it, as upon any other money bond. *Gilham v. Locke*, 9 Ves. 612. *Ex p. Berry*, 19 Ves. 218. *Styles v. Att. Gen.* 2 Atk. 152.

And where there are several obligors, the obligee may prove the whole amount of the sum that remains due to him, upon the estate of each, and receive dividends thereon, until he receive 20s. in the pound. see *Ex p. Wildman*, 1 Atk. 109.

As to the interest allowed to be proved on bonds, it must not (added to the principal remaining due) exceed the amount of the penalty. Cook, 207.

It may be necessary to observe, (although already mentioned in another part of the work, *ante*, p. 75,) that a bond may be proved either by the obligee, or by any person to whom he has assigned his debt ; but in the latter case, the deposition in proof of the debt, should be made by both. *Ex p. Child*, 1 Atk. 111.

*Bills of exchange and promissory notes.*] In all cases where a bankrupt would be liable as acceptor, drawer or indorser of a bill of exchange, or as drawer or indorser of a promissory note, to an action at the suit of the holder, supposing the bill or note to be due and not paid, the holder may prove upon the estate for the amount of it, whether due or not. Therefore a bill or note, not stamped with a proper stamp, where a stamp is necessary to its validity, cannot be proved. *Ex p. Manners*, 1 Rose, 68. So, if due notice of the dishonour of a bill or note, have not been given to the bankrupt or his assignees, where such notice is necessary; *Cook*, 189, 190. *Rohde v. Procter*, 6 Dow. & R. 610. 4 B. & C. 517. *see also Bickerdike v. Bollman*, 1 T. R. 405. *and see Gee v. Brown*, 2 Str. 792. *Blessard v. Hirst*, 5 Bur. 2860, *Goodall v. Dolley*, 1 T. R. 712. *Rogers v. Stephens*, 2 T. R. 713. *Nicholson v. Gouthit*, 2 H. Bl. 609. *Walwyn v. St. Quentin*, 1 B. & P. 652. *Bayley on Bills*; or if time have been given to the acceptor of a bill of exchange, or drawer of a promissory note, without the consent of the bankrupt as drawer or indorser, or of his assignees, (it not being a mere accommodation bill or note as between the bankrupt and the person to whom time was so given); *Ex p. Holden*, *Cook*, 189. *and see Tindal v. Brown*, 1 T. R. 167. 2 T. R. 186. *Walwyn v. St. Quentin*, 1 B. & P. 652. *English v. Darley*, 2 B. & P. 61. *Clarke v. Devlin*, 3 B. & P. 363. *Stevens v. Lynch*, 12 East, 38. *Gould v. Robinson*, 8 East, 576; or if the holder have compounded with the acceptor of a bill or drawer of a promissory note, without the consent of the bankrupt, as indorser, &c. or his assignees: *Ex p. Smith*, 3 Bro. 1. *Ex p. Gifford*, 6 Ves. 805. *Ex p. Slater*, 6 Ves. 146. *Ex p. Smith*, *Cook*, 191. *Ex p. Wilson*, 11 Ves. 410: in these cases, the holder cannot prove upon the estate of the bankrupt, because he could not maintain an action against him under the same circumstances, if he had not been bankrupt; or if he have proved, the Lord Chancellor, upon petition, will order the proof to be expunged. So, if the bill or note, though passed by the bankrupt, have not been indorsed by him, the holder cannot prove it upon his estate, *Ex p. Blackburne*, 10 Ves. 204. *Ex p. Hustler*, 1 Glyn & J. 9. *and see Ex p. Dixon*, Cox, 194, because he could not maintain an action against him upon it. If indeed there be an immediate privity between the bankrupt and the holder, as if the bill or note were given by the bankrupt to the holder, for goods sold or the like, the holder may prove upon the estate for the original debt; *Ex p. Blackburne*, 10 Ves. 204. *Ex p. Rathbone*, 1 Buck, 215; or if the holder had indorsed the bill or note for the accommodation of the bankrupt, and had been obliged to take it up, he might then prove for the amount of the money he had paid, *Ex p. Hustler*, 3 Mad.



117, or if he had got it discounted for the bankrupt, by his indorsing it, he will be allowed to prove for the amount of his liability, before he has taken up the bill. *Ex p. Robinson*, 1 *Buck*, 113. *Ex p. Hustler*, *Buck*, 113.

Promissory notes, where given by the bankrupt, whereby principal monies and interest were made payable after three months notice, and the interest was actually paid for two years before the commission issued, but no notice had been given, the notes were held to be proveable, *Ex p. Elgar*, 2 *Glyn & J.* 1. But see *Ex p. Downman*, 2 *Glyn & J.* 85. So also a promissory note payable with interest 12 months after notice, expressed to be "for value received," and the maker became bankrupt before notice given, may be proved by the payee under the commission. *Clayton v. Gosling*, 8 *D. & R.* 110; 5 *B. & C.* 360.

So the person for whose accommodation a note is drawn, or a bill drawn or accepted, cannot prove it under a commission against the person who drew or accepted it for his accommodation, for he could not maintain any action upon it against him; nor will a person who has taken up a bill for the honour of the drawer be allowed to prove it upon the estate of the acceptor without effects. *Ex p. Lambert*, 13 *Ves.* 179. But where A. lent his indorsement on an accommodation bill to the drawer, and the acceptor became bankrupt the day before the bill was due, and A. was afterwards obliged to take it up, it was holden that A. might prove the amount of it upon the estate of the acceptor. *Houle v. Baxter*, 3 *East*, 177. So the party who has accepted or drawn an accommodation bill or note, may, at any time after he has paid it, prove the amount upon the estate of the person for whose accommodation he accepted or drew it, even although he did not pay it until after the commission issued; for he is deemed a surety for the bankrupt, within the meaning of the statute. *Ex p. Lloyd*, 1 *Rose*, 4. See *post*. Where there have been mutual accommodation bills, and one of the parties becomes bankrupt, formerly the solvent party was allowed to prove upon the other's estate for the amount of the bills accepted by him, the dividends being stayed until he had actually paid them; *Rolfe v. Caslon*, 2 *H. Bl.* 570. *Hodgson v. Bell*, 7 *T. R.* 97. *Ex p. Beaufoy*, *Cook*, 180. *Ex p. Lord Clanricarde*, *Cook*, 182; but now he must actually pay them before he will be allowed to prove the amount of them upon the bankrupt's estate. *Re Bowness and Padmore*, *Cook*, 183; and see *Ex p. Hunter*, 5 *Mad.* 105. *Ex p. Bloxham*, 8 *Ves.* 531. *Stedman v. Martinnant*, 13 *East*, 427. But where both the parties become bankrupts, the bills outstanding in the hands of the assignees are excluded from proof, and the cash balance merely, that is to say, the balance of the sums paid by the bankrupts respectively for the bills

which they have taken up, is the sum to be proved by the assignees on either side; *Ex p. Walker*, 4 *Ves.* 373. *Ex p. Earle*, 5 *Ves.* 833. See *Cowley v. Dunlop*, 7 *T. R.* 565. See *Ex p. Read*, 1 *Glyn & J.* 224; and the dividends would probably be ordered to be retained, in order to an adjustment between the estates as to the proof that might be made upon them respectively of any other such bills outstanding in the hands of third parties. See *Ex p. Metcalfe*, 11 *Ves.* 404. *Ex p. Masklyn, Cox*, 394. What has hitherto been stated as to accommodation bills, relates to them merely when in the hands of the parties to them, or of their assignees. But when they are in the hands of a third party, for a valuable consideration, even with notice of their being accommodation bills (see *Smith v. Knox*, 3 *Esp.* 46), he may prove upon them in the same manner as upon any other bills, that is, he may prove the whole of each bill upon the estate of each of the parties to it, and receive dividends only to the amount due to him; *Ex p. King, Cook*, 177. *Ex p. Lee*, 1 *P. Wms.* 782. *Ex p. Crossley*, 3 *Bro.* 237. *Ex p. Bloxham*, 6 *Ves.* 449, 600, 8 *Ves.* 531. *Fentum v. Pocock*, 5 *Taunt.* 192. *Jones v. Hibbert*, 2 *Stark.* 304. *Bank of Ireland v. Beresford*, 3 *Dow*, 238; or he may receive dividends to the whole amount of the bill, if there be any party to it, who was not a party to the accommodation transaction; in which case he will be deemed a trustee for such other party, for the surplus. *Vide post.*

And the holder of bills of exchange or promissory notes, may prove against the estate of such of the drawers, acceptors or indorsers, &c. as are bankrupts, and may bring actions against the others; and he may receive a dividend upon his whole debt from each of the estates upon which he has proved, provided he do not receive more than twenty shillings in the pound of the debt actually due to him. *Ex p. Dyer*, 6 *Ves.* 9, and see *Ex p. Adam*, 2 *Rose*, 36. *Ex Bank of England, Id.* 82. *Ex p. Bigg, Id.* 37. *Ex p. Martin, Id.* 87. *Ex p. Bank of Scotland, Id.* 197. *Ex p. Wildman*, 1 *Atk.* 109.

If a bill of exchange or promissory note be in existence at the time a commission is sued out against a party to it, it is immaterial whether the person who proves upon it, took it up before or after the issuing of the commission. *Macarty v. Barrow*, 2 *Str.* 949. *Starey v. Burns*, 7 *East*, 435. Thus, if a bill become due after the bankruptcy of the acceptor, an indorser, who is obliged to take it up, may prove it upon the acceptor's estate, *Joseph v. Orme*, 2 *New R.* 180. *Ex p. Brymer, Cook*, 187. see *Howis v. Wiggins*, 4 *T. R.* 714. *Brooks v. Rogers*, 1 *H. Bl.* 640 *semb. cont.*, or take the benefit of any proof that may have been already made by any of the other parties to it. *Ex*

*p. Lobbon*, 17 *Ves.* 334. Whence it follows, that proof by any of the parties to a bill, is a bar to an action against the bankrupt by any other party who may have taken it up afterwards. *Id.*

If any part of a bill have been received by the holder, before he has actually proved it upon the estate of a party, he can prove only for the residue; *Cooper v. Pepys*, 1 *Atk.* 107. *Ex p. Blackburne*, 10 *Ves.* 204. *Ex p. Rothbone*, 3 *Mad.* 134, *Buck*, 215; and even a dividend declared, though not paid, must be deducted. *Ex p. Leers*, 6 *Ves.* 644. *Ex p. Bank of Scotland*, 2 *Rose*, 197, 19 *Ves.* 310. So where a guarantee accepts a bill for goods, and becomes bankrupt, and part of the goods have been paid for by the vendee, the vendor can prove only for the balance upon the estate of the guarantee. *Ex p. Reader*, *Buck*, 381. But in a case where the holder was paid a part of the bill by a person who indorsed it to him, he was allowed to prove for the whole amount, and for all that should be received by him beyond the sum due to him he should be deemed a trustee for the indorser. *Ex p. De Tastet*, 1 *Rose*, 10. and see *Ex p. Turner*, 3 *Ves.* 243. Where a creditor proves a debt, and states that he holds certain bills of exchange or promissory notes as securities, if any of them be afterwards paid to him, the amount of it must be expunged from the proof, and the future dividends be paid upon the residue only; *Ex p. Smith*, *Cook*, 175. *Ex p. Smith*, *Id.* 191. *Ex p. Barratt*, 1 *Glyn & J.* 327. *Ex p. Bloxham*, *Cook*, 176. *Ex p. Wallace*, *Id.* *Ex p. Crossley*, *Id.* *Ex p. Burn*, 2 *Rose*, 55; so, if a creditor prove a debt for goods sold, &c. and also prove upon a bill of exchange, and the amount of the bill be afterwards paid to him by another party, that amount shall be expunged from the proof; *Ex p. Woodman*, *Cox*, 201; but where the creditor proves upon the estate for the bills only, and they were not given to him by the bankrupt as a security for an antecedent debt, there if he receive a dividend from any of the parties to the bills, that dividend shall not be deducted from his proof, but he shall still continue to receive the dividends upon his whole debt, until he be paid twenty shillings in the pound. *Ex p. Wildman*, 1 *Atk.* 109. see *Ex p. Lefebvre*, 2 *P. Wms.* 407 *semb. cont.* However, it has been holden that an assignee or indorsee of the bankrupt's notes or acceptances, bought by him at the rate of 10s. in the pound or the like, may prove upon his estate for the full amount, *Ex p. Lee*, 1 *P. Wms.* 782. *Ex p. Atkins*, *Buck*, 479, provided that at the time of the bankruptcy they were in the hands of persons intitled to prove them under the commission. *Ex p. Rogers*, *Buck*, 490.

Where a bill is given in lieu of a former bill, and both remain in the hands of the creditor, due and not paid, he may treat the latter bill as a nullity, and prove upon the former. *Ex p. Barclay*, 7 Ves. 597.

Bills payable to fictitious payees, may, notwithstanding, be proved by *bona fide* holders for valuable consideration. *Ev p. Allen, Cook*, 193. *Ex p. Clarke*, 3 Bro. 238. and see *Tatlock v. Harris*, 3 T. R. 174. *Gibson v. Minet*, 3 T. R. 481, 1 H. Bl. 569. *Collis v. Emmett*, 1 H. Bl. 313.

It seems that the notes issued by country bankers, and made payable in cash or Bank of England notes, have been determined not to be promissory notes within the statute of *Anne*; and that the holder, who has received them from an intermediate person, is not entitled to prove them as a debt against the maker. *Ex p. Jameson*, 2 Rose, 225. *Ex p. Davison, Buck*, 31, See *Dickson v. Evans*, 6 T. R. 57. So it was holden, that a note payable when the drawer should be in good circumstances, could not be proved. *Ex p. Tootell*, 4 Ves. 372.

And lastly, as to interest, re-exchange, &c.: Formerly interest was not allowed upon a bill of exchange or promissory note, unless expressly stipulated for in the body of the bill or note. *Cook*, 207. *Ex p. Marlar*, 1 Atk. 150. But now, by stat. 6 Geo. 4. c. 16. § 57, in all future commissions against any person or persons liable upon any bill of exchange or promissory note, whereupon interest is not reserved, overdue at the issuing the commission, the holder of such bill of exchange or promissory note shall be entitled to prove for interest upon the same, to be calculated by the commissioners to the date of the commission, at such rate as is allowed by the Court of King's Bench in actions upon such bills or notes.

Costs of protests, commisssion, re-exchange, &c. incurred before the issuing of the commission, may it seems be proved, as well as the amount of the bill and interest; See *Anon.* 1 Atk. 140. *Ex p. Moor*, 2 Bro. 597; but not such as are incurred after. Yet where a foreign bill is protested and returned, and proved upon the estate of a bankrupt party in this country, the amount of the bill in English money, should be calculated according to the value of the foreign money in English coin at the time the bill was protested. *Ex p. Hoffman, Cook*, 194. *Ex p. Cohen, Id.* See *Francis v. Rucker, Amb.* 672.

*Damages, costs, &c.*] By stat. 6 G. 4. c. 16. § 58. if any plaintiff in any action at law or suit in equity, or petition in bankruptcy or lunacy, shall have obtained any judgment, decree, or order against any person who shall thereafter become bankrupt for any debt or demand in respect of which such

plaintiff or petitioner shall prove under the commission ; such plaintiff or petitioner shall also be entitled to prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the bankruptcy.

This clause, as far as it relates to decrees in equity or orders in bankruptcy or lunacy, is intelligible enough. But as far as it relates to judgments at law (meaning of course final judgments, for none others establish the amount of the debt or damages), it seems to have been written under some misapprehension : it relates only to judgments obtained against defendants before their bankruptcy, and there never was a doubt but that costs might be proved in such a case ; and it contemplates the possibility of final judgments before bankruptcy, where the costs are not taxed until after bankruptcy, which is impossible, the taxation of costs being in practice deemed the signing of the judgment. However the best way is to state the law, as it stood before this statute, and let the reader apply the above clause of the new statute to it according to his own judgment. And first, of judgments, &c. in courts of common law.

Personal actions are brought, either for claims sounding in debt, which may be proved under a commission, or for claims sounding merely in damages, which may not be proved. Now it is quite clear that if a verdict and judgment either for debt or damages, or final judgment after a judgment by default, be obtained, or a judgment for a defendant either of nonsuit or after verdict, &c. be signed, before the bankruptcy of the opposite party, the whole amount of the judgment (costs of course included) may be proved upon his estate. *Ex p. Hill*, 11 Ves. 646. *Gulliver v. Drinkwater*, 2 T. R. 261. And if after the bankruptcy the judgment be revived by *scire facias*, *Phillips v. Brown*, 6 T. . 282, or a writ of error be brought upon it, *Id. Graham v. Benton*, 2 Str. 1196, the costs of the *scire facias*, or writ of error may be proved, as well as the amount of the original judgment.

Where a verdict for plaintiff, is before the bankruptcy of the defendant, and the judgment after, not only the amount of the verdict, but also the costs given by the judgment, may be proved upon the bankrupt's estate, if the action were for a debt ; *Aylett v. Harford*, 2 W. Bl. 1317. *Ex p. Butterfill*, 1 Ross, 192. *Ex p. Rashley*, *Id.* *Ex p. Haynes*, 1 Glyn & J. 107. *Ex p. Poucher*, *Id.* 385. *Bouteflower v. Coates*, Cowp. 25 ; so, in an action for a debt, if a verdict be taken subject to an award before the bankruptcy, and the award and judgment be after it, *Ex p. Haynes*, 1 G. & J. 107, or if after judgment by default and inquiry executed, the defendant becomes bankrupt, and

afterwards final judgment be signed, *Ex p. Simpson*, 3 Bro. 46, the amount of the judgment may be proved upon the estate. In these cases however the commissioners are not concluded by the verdict, if they have reason to doubt the propriety of it, *Ex p. Butterfill*, 1 Rose, 192. *Ex p. Rashleigh*, *Id.* or if the circumstances of the case be such as would induce a court of equity to restrain the execution. *Cooke*, 219. If, on the other hand, the action were for damages merely, it seems that neither damages nor costs are proveable, unless the judgment also was obtained before the suing out of the commission; *Ex p. Todd*, 3 Wils. 270. *Buss v. Gilbert*, 2 M. & S. 70. *Ex p. Charles*, 16 Ves. 256, 14 East, 197. and see *Scott v. Ambrose*, 3 M. & S. 326. *Ex p. Poucher*, *supra*; yet even this has been ruled otherwise; *Beeston v. White*, 7 Price, 209. *Langford v. Ellis*, 1 H. Bl. 29, n. and see *Willet v. Pringle*, 2 New R. 190; but it is quite clear that if the judgment were obtained before the issuing of the commission, though after, but without knowledge of, the act of bankruptcy, it would be proveable, by stat. 6 G. 4. c. 16. § 47. *ante*, p. 76. *Robinson v. Vale*, 4 D. & R. 432, 2 B. & C. 762.

Where both verdict and judgment are after the bankruptcy, then if the action were for a debt, the debt is proveable, the costs not, although the latter as well as the former would perhaps be barred by the certificate. *Ex p. Poucher*, 1 Glyn & J. 385. *Ex p. Hill*, 11 Res. 646, 2 New R. 191, n. See *Willet v. Pringle*, 2 New R. 190. *Graham v. Benton*, 2 Str. 1194, 1 Wils. 41. *Blandford v. Foot*, *Cowp.* 138. *Scott v. Ambrose*, 3 M. & S. 326. *Dinsdale v. Eames*, 2 B. & B. 8, 4 Moor, 350. *Lewis v. Piercy*, 1 H. Bl. 29. But if the action were for damages, neither the damages when ascertained, nor the costs, are proveable. *Walter v. Sherlock*, 3 Wils. 272. *Bannister v. Scott*, 6 T. R. 489. *Ex p. Hill*, 11 Ves. 646. Yet even in these cases, if the judgment be obtained before the issuing of the commission, though after the act of bankruptcy, the whole amount of the judgment would be proveable, by stat. 6 Geo. 4. c. 16. § 47. according to the principle laid down in the case of *Robinson v. Vale*, 4 D. & R. 432, 2 B. & C. 762, *supra*. A judgment for damages and costs in assumpsit, is a debt proveable under a bankrupt's commission, though final judgment is not entered up until after the commission issued. *Ex p. Bird*, 7 Dow. & R. 436, 4 B. & C. 880.

A judgment of nonsuit, or judgment upon a verdict for a defendant, is not proveable until the judgment is signed and costs taxed. *Walker v. Barnes*, 1 Marsh. 346. and see *Ex p. Hill*, 11 Ves. 646. see 5 T. R. 365. 1 B. & P. 134 *cont.* But if the costs be taxed before the issuing of the commission, though after

the act of bankruptcy, they would be proveable, by stat. 6 Geo. 4. c. 16. § 47, so where the bankrupt disputing the commission, brought an action of trespass against the commissioners for false imprisonment, and was nonsuited, and the commission was afterwards superseded, and thereupon another sued out upon the same act of bankruptcy as the first, it was held that the costs of the nonsuit were proveable under the second commission. *Holding v. Impey*, 7 Moore, 614. 1 Bing. 189.

So, costs in equity are not proveable, unless actually taxed before the issuing of the commission. *Ex p. Sneaps*, Cook, 223. *Per Lord Ellenborough*, in *Ex p. Charles*, 14 East, 208. *R. v. Davis*, 9 East, 318. *Ex p. Eicke*, 1 Glyn & J. 261. See *Wall v. Atkinson*, Cooper, 198, 1 Rose, 196. And see 6 Geo. 4. c. 16. § 47, and *Robinson v. Vale*, *supra*.

If judgment be entered upon a warrant of attorney or cognovit, before the issuing of the commission against the defendant, it may be proved in the same manner as any other judgment. Or if the judgment be entered up, so as to have relation to a time previous to the issuing of the commission, it may be proved, provided the judgment could have been actually entered up at that time, according to the terms of the defeazance; but not otherwise, *Staines v. Plank*, 8 T. R. 386. See *Wyborne v. Ross*, 2 Taunt. 68, unless it were given for a debt of itself proveable.

A debt arising from an award made before bankruptcy is proveable; *Baker's case*, 2 Str. 1152; but if made after bankruptcy, *Ex p. Kemshead*, 1 Rose, 149, or, at least, after the issuing of the commission, see 6 Geo. 4. c. 16. §. 47. *ante*, p. 68, it is not. Where a verdict is taken subject to an award, the award afterwards made relates back to the time of the verdict. See *ante*, p. 76.

*Interest.*] In what cases interest is proveable upon bills of exchange and promissory notes, see *ante*, p. 83; and as to interest on bonds, see *ante*, p. 78. In all other cases interest is not proveable, unless the parties have expressly stipulated for it in the contract; and a surety, paying after the bankruptcy to a creditor who has proved, can only stand in his place upon the bankrupt's estate; and, therefore, in the case of a surplus, he can claim no interest which the creditor himself could not have claimed. *Ex p. Houston*, 2 Glyn & J. 36.

*Rent.*] For rent due by a person who afterwards becomes bankrupt, the landlord may distrain, before the act of bankruptcy, for the whole amount due. After the act of bankruptcy, also, the landlord may distrain, even although the messenger be

actually in possession of the goods upon the premises ; *Ex p. Plummer*, 1 *Atk.* 103. *Ex p. Jaques*, *Id.* 104, *cit.* *Ex p. Dillon*, *Id.* *cit.* *Buckley v. Taylor*, 2 *T. R.* 600 ; and formerly he might have distrained for the whole of the rent due ; but now, by stat. 6 Geo. 4. c. 16. § 74. no distress for rent made and levied after an act of bankruptcy upon the goods or effects of any bankrupt (whether before or after the issuing of the commission) shall be available for more than one year's rent, accrued prior to the date of the commission, but the landlord or party to whom the rent shall be due, shall be allowed to come in as a creditor under the commission for the overplus of the rent due, and for which the distress shall not be available.

And if the landlord do not distrain, if he once allow the goods to be taken off the premises, he, of course, loses his remedy by distress, but he may prove upon the estate for the amount of the rent due up to the date of the commission ; *Ex p. Desharmes*, 1 *Atk.* 103 ; even where the landlord distrained before bankruptcy, and the goods were replevied, and pending the replevin both the tenant and his pledges became bankrupt, and the tenant's assignees possessed themselves of the goods replevied, it was holden that the landlord had lost his lien upon them, and must prove for his rent under the commission. *Bradyll v. Ball*, 1 *Bro.* 427. But he cannot do both ; he cannot distrain and prove for the same rent. *Ex p. Grove*, 1 *Atk.* 103.

If even after an act of bankruptcy, the tenant pay the rent to the landlord who is about to distrain, the payment will be good, and cannot be impeached by the assignees. *Stevenson v. Wood*, 5 *Esp.* 200. But where the sheriff seized under an execution, after an act of bankruptcy, and sold the goods on the day the commission issued and the day after, and afterwards paid the landlord a year's rent, it was holden that this payment to the landlord could not be justified by the sheriff, and that the assignees had a right to recover it from him. *Lee v. Lopez*, 15 *East*, 230.

*Servants' wages and Apprentice Fees.*] Formerly an apprentice who had paid a premium, and whose master became bankrupt before the apprenticeship expired, could only come in as a creditor, and prove for a proportionate part of his apprentice fee ; *Ex p. Sandby*, 1 *Atk.* 149 ; although the commissioners, instead of this, usually recommended it to the creditors to allow him a gross sum out of the estate, in order to apprentice him to another master. *Barwell v. Ward*, 1 *Atk.* 259. But now, by stat. 6 Geo. 4. c. 16. § 49. where any person shall be an apprentice to a bankrupt at the time of issuing the commission against him, the issuing of such commission shall be and enure as a complete



discharge of the indenture or indentures whereby such apprentice was bound to such bankrupt; and if any sum shall have been really and *bona fide* paid, by or on the behalf of such apprentice to the bankrupt, as an apprentice fee, it shall be lawful for the commissioners, upon proof thereof, to order any sum to be paid to or for the use of such apprentice which they shall think reasonable, regard being had, in estimating such sum, to the amount of the sum so paid by or on behalf of such apprentice to the bankrupt, and to the time during which such apprentice shall have resided with the bankrupt previous to the issuing of the commission. Where the apprentice fee was paid under an agreement for the apprenticeship, but from mere inattention no indenture had in fact been executed, it was held to be a case within this section of the statute. *Ex p. Haynes*, 2 Glyn & J. 122.

And by sect. 48 of the same statute, when any bankrupt shall have been indebted, at the time of issuing the commission against him, to any servant or clerk of such bankrupt, in respect of the wages or salary of such servant or clerk, it shall be lawful for the commissioners, upon proof thereof, to order so much as shall be so due as aforesaid, not exceeding six months wages or salary, to be paid to such servant or clerk out of the estate of such bankrupt; and such servant or clerk shall be at liberty to prove under the commission for any sum exceeding such last-mentioned amount.

*Annuities.*] Formerly only the arrears of an annuity, due at the time of the bankruptcy, could be proved upon the estate of a bankrupt grantor, unless the annuity were secured by bond, and the bond forfeited at the time of the bankruptcy; in which latter case, the commissioners might put value upon the annuity, and the grantee might prove for that amount. *Ex p. Artis*, 2 Ves. Sen. 490. *Ex p. Betton*, 1 Atk. 231. And see *Wyllie v. Wilkes*, 2 Doug. 519. But if the bond were not forfeited at the time of the bankruptcy, the grantee could not prove it; *Perkins v. Kempland*, 2 W. Bl. 1136; or if it were secured by covenant as well as bond, the grantee need not prove it, but might proceed against the bankrupt afterwards upon his covenant, and his certificate would be no bar to the action. 7 Vin. Abr. 71 pl. 4. 4 Bur. 2446. 1 Doug. 93.

But now, by stat. 6 Geo. 4. c. 16. § 54. any annuity creditor of any bankrupt, by whatever assurance the same be secured, and whether there were or not any arrears of such annuity due at the bankruptcy, shall be entitled to prove for the value of such annuity, which value the commissioners shall ascertain, regard being had to the original price given for the said an-

nunity, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the date of the commission.

A bond conditioned for the payment of a sum of money at the death of the obligor, with interest in the mean time, is not an annuity within the meaning of this act; an annuity is where the principal is altogether sunk, and a mere annual sum payable. *See Winter v. Mouseley*, 2 B. & A. 802. *See Pattison v. Bankes*, Cowp. 540.

One of the repealed acts (49 Geo. 3. c. 121. § 17.) was the same in substance as the above section, except that it did not point out the principle upon which the commissioners were to make their valuation. In ordinary cases, the mode of computing the value under the repealed act, was the same as that pointed out by the above section. *See Ex p. Whitehead*, 19 Ves. 557. *And see Ex p. Brockliss*, Buck, 406. But where a person in an ill state of health purchased an annuity for his own life for £8000, and afterwards recovered, and then the grantor became bankrupt, and an actuary valued the annuity at £10,000, the Lord Chancellor allowed the grantee to prove for this latter sum. *Ex p. Thistlewood*, 1 Rose, 290. But this cannot now be done; *Ex p. Fisher*, 2 Glyn & J. 102; nor is the state of the money market a circumstance to be considered, in estimating the value of an annuity. *Ex p. Webb*, 2 Glyn & J. 29. Where the bankrupt being indebted to a testator in £1200, the latter by his will forgave him £1000 of it, upon condition that he paid an annuity of £60 to his sister during her life, and after her death £200 to his executrix; but that if he made default in the payment thereof, the executrix was to call in the whole £1200: default being made before the bankruptcy, the Lord Chancellor, upon petition, allowed the executrix to prove for the £1200. *Ex p. English*, 2 Bro. 610.

As to annuities charged upon land, or rent charges, they shall be treated of in another part of this section, when we come to consider “Proofs by creditors holding securities.”

*Contingent debts.*] Formerly, debts payable upon a contingency which did not happen before the issuing of the commission, were not proveable. 2 P. Wms. 395. 1 Atk. 114. 2 Str. 867. 2 L. Raym. 1546. 3 Wils. 270. 3 T. R. 435. Thus, if a person lent stock to a trader, without naming any time at which the stock was to be replaced, *Utterson v. Vernon*, 3 T. R. 539, 4 Id. 570. *Ex p. Day*, 7 Ves. 301. *Ex p. Alcock*, 1 Rose, 323, 1 V. & B. 176, or took a bond to replace stock at a certain time, *Ex p. King*, 8 Ves. 334, if no demand were made of the trader, or the time specified in the condition of the bond had

not elapsed, before the issuing of a commission of bankrupt against the trader or obligor, the lender of the stock could not prove upon his estate. *See ante*, p. 69, 70. So, upon a bond conditioned to pay money to the executors of the obligee, and interest in the mean time on certain days, or within twenty-one days after demand, and no demand of interest made before the suing out of a commission against the obligor, the obligee could not prove. *Winter v. Mauseley*, 2 B & A. 802. So upon a covenant to pay money on demand or request, and no demand or request made before the issuing of the commission against the covenantor, the covenantee could not prove. *Ex p. Campbell*, 16 Ves. 248. *Ex p. Mare*, 8 Ves. 335. So, where a debtor gave to his creditor a warrant of attorney to confess judgment presently, with a defeazance upon payment of a certain sum upon a contingency, and the contingency did not happen before the issuing of a commission against the debtor, it was holden that the creditor could not prove. *Staines v. Plank*, 8 T. R. 386. So, if a man guaranteed the payment of the debt of another, either on a day certain which had not elapsed, *Alsop v. Price*, 1 Doug. 160. *Hoffman v. Foudrinier*, 5 M. & S. 21. *Ex p. M'Millan*, Buck, 287. *Ex p. Adney*, Cowp. 460, or upon demand or notice, and no demand made or notice given, *Ex p. Minet*, 14 Ves. 189. *Ex p. Gardom*, 15 Ves. 286. And see *Ex p. Reed*, Buck, 239, before a commission of bankrupt issued against the guarantee, the creditor could not prove for the amount upon his estate. And the same of a surety in other cases. *See Alsop v. Price*, 1 Doug. 160. *Ex p. Gardom*, 15 Ves. 286. *Ex p. M'Millan*, Buck, 287. As, for instance, against a surety to a bastardy bond, the overseers could prove only the expenses they had incurred, to the time of the suing out of the commission; *Overseers of St. Martin v. Warren*, 1 B. & A. 491. And see *Miller v. Whittenbury*, 1 Camp. 428; against bail to an action, where the commission was sued out before judgment in the original action, *Hockley v. Merry*, 2 Str. 1043, or, more correctly speaking, before the bail were fixed, *Goddard v. Vanderheydon*, 3 Wils. 262, the plaintiff could not prove; or against bail to the sheriff, where the commission was issued against them before the *quarto die post* of the return of the writ, in actions by original, *Coulson v. Hammon*, 4 D. & R. 160, 2 B. & C. 626. *See Campbell v. Jameson*, 1 Bing. 320, or before the return day of the writ, in actions by bill the plaintiff could not prove. *See Cockerill v. Owston*, 1 Bur. 436. *Bouteflour v. Coates*, Cowp. 25.

But now, by stat. 6 Geo. 4. c. 16. § 56, if any bankrupt shall, before the issuing of the commission, have contracted any debt payable upon a contingency which shall not have happened

before the issuing of such commission, the person with whom such debt has been contracted may, if he think fit, apply to the commissioners to set a value upon such debt, and the commissioners are hereby required to ascertain the value thereof, and to admit such person to prove the amount so ascertained, and to receive dividends thereon: or if such value shall not be so ascertained before the contingency shall have happened, then such person may, after such contingency shall have happened, prove in respect of such debt, and receive dividends with the other creditors, not disturbing any former dividends; provided such person had not, when such debt was contracted, notice of any act of bankruptcy by such bankrupt committed.

Debts, however, which are merely defeasible upon a contingency, are proveable. *Staines v. Planck*, 8 T. R. 389.

*Where there are mutual debts.*] By stat. 6 Geo. 4. c. 16. § 50, where there has been mutual credit given by the bankrupt and any other person, or where there are mutual debts between the bankrupt and any other person, the commissioners shall state the account between them, and one debt or demand may be set against another, notwithstanding any prior act of bankruptcy committed by such bankrupt before the credit given to or the debt contracted by him; and what shall appear due on either side on the balance of such account, and no more, shall be claimed and paid on either side respectively; and every debt or demand hereby made proveable against the estate of the bankrupt, may also be set off in manner aforesaid against such estate: provided the person claiming the benefit of such set-off had not when such credit was given, notice of an act of bankruptcy by such bankrupt committed.

Formerly, if a creditor of the bankrupt were also indebted to the bankrupt, the assignees might sue him for and recover the amount of the latter debt, and he might prove upon the bankrupt's estate for the amount of the debt due to him. This was extremely disadvantageous to creditors, where there happened to be mutual dealings between them and the bankrupt; they would have to pay the whole of the debts due by them, and receive probably but a fractional part of the debts due to them. But this was remedied by stat. 5 Geo. 2. c. 30. § 28. and 46 Geo. 3. c. 135. § 3. (both now repealed,) which were similar to the above section, and which made the balance of the accounts between the parties, the debt in law, to be proved by the creditor, or recovered by the assignees.

Mutual debts, of course, consist of a debt due from the bankrupt to the creditor, and a debt due by the creditor to the bankrupt's estate. We shall treat of these separately. The debt

due from the bankrupt to the creditor must be such as might be proved under the commission; (*see* 6 Geo. 4. c. 16. § 50. *supra*;) otherwise it cannot be set off. But where the holder of a promissory note of a bankrupt, after the issuing of the commission, indorsed it over to a person who was a debtor to the bankrupt's estate, in order that he might set it off, in his settlement with the assignees, it was holden that he could not set it off, although he might have proved for the amount. *Marsh v. Chambers*, 2 Str. 1234. And *see* *Dickson v. Evans*, 6 T. R. 57. And even where such a transfer of a note of a bankrupt took place before the issuing of the commission, but after both indorser and indorsee were apprised of his insolvency, it was holden that the indorsee could not set it off. *Ex p. Stone*, 1 Glyn & J. 191. So, where a country banker became bankrupt, and a debtor to his estate, after the issuing of the commission, purchased a quantity of his bank notes at the rate of 10s. in the pound, it was holden that he could not set them off in his settlement with the assignees. *Hodson & al. v. Young*, MS. E. 1814. These, it must be observed, are decisions upon the repealed statutes; but I have no doubt the point would be decided in the same way upon the present statute, upon the ground that such a set off would be a fraud upon the bankrupt laws. On the other hand, where a debtor to a bankrupt's estate has a fair subject of set off, the assignees shall not deprive him of it. Therefore, where a country banker became bankrupt, and at the time of his bankruptcy he and another country banker in the same town held notes and other securities of each other to nearly the same amount; immediately after the private meeting, after the banker was declared bankrupt, and a provisional assignee was appointed, the provisional assignee presented the notes of the other banker for payment, partly at the bank in the country and partly at the house of his agent in London, and was paid: it was holden that the banker whose notes were so paid, might recover the amount in an action for money had and received against the provisional assignee. *Edmeads v. Newman*, 2 D. & R. 568; 1 B. & C. 418, and *see* *Ex p. Rawson*, Jac. 274. And where the bankrupt agreed to set off a debt owing to him against a debt he owed to the debtor's brother, and had set off the debt in his books, it was held to bar the assignees' claim to the debt. *Cuxon v. Chadley*, 1 Car. & P. 174.

As to the debt due by the creditor to the bankrupt's estate, it must be due (whether payable or not is immaterial) before the act of bankruptcy on which the commission is founded. Where a banker had accepted bills for a trader, and the trader, after he committed an act of bankruptcy, but before a commission sued out, lodged money in his hands for the payment of them, it was holden that the assignees might recover this money from the

banker, and that the banker could not set it off, although he had paid the bills ; for the money so paid in by the bankrupt, was in law the money of the assignees. *Tamplin v. Diggins*, 2 Camp. 212. And see *Ridout v. Brough*, Cowp. 133. So, if a banker receives and pays money on account of a bankrupt, after notice of his bankruptcy, he cannot set off the payments against the receipts, as against the assignees. *Vernon v. Hankey*, 2 T. R. 113, 3 Bro. 313. And see *Raphael v. Birdwood*, 5 Price, 604. So, if the bankrupt have obtained an order in Chancery for costs against the creditor, but they are not taxed before the act of bankruptcy, they cannot be set off; for they are not a debt until taxed. *Ex p. Rhodes*, 15 Ves. 539. If the holder of an acceptance of a trader buy goods of him before his bankruptcy, he may set off the acceptance against the debt; *Hankey v. Smith*, 3 T. R. 507; but if he had bought the goods after the act of bankruptcy, he could not. Where a person sold goods to a trader to the amount of £430, at six months' credit, and afterwards sold him another parcel to the amount of £230 at the same credit; at the expiration of the credit for the first parcel, the trader gave him bills upon other persons for £600, and he gave the trader an undertaking to repay him the balance, £170, upon the bills being paid: the bills were paid, and the trader had become bankrupt, before the credit for the second parcel expired: yet it was holden that the vendor of the goods could set off this £170 against the amount of the second parcel. *Atkinson v. Elliott*, 7 T. R. 378. So, where a creditor seizes the goods of his debtor under an execution, to the amount of part of his debt, before an act of bankruptcy, the Lord Chancellor will allow him to prove for the residue, even although the validity of his execution be disputed by the assignees, and in a course of litigation. *Ex p. Hopley*, 2 J. & W. 220, 1 Glyn & J. 63. See 1 J. & W. 423, cont. So, if a trader, before an act of bankruptcy, send goods to a factor for sale, and draw bills upon him on account of them, the factor may set off the amount of the bills, when paid, against the proceeds of the goods, when sold by him. *Vide post*, sect. 9. So, if a trader, before an act of bankruptcy, give a security to his creditor for his debt, and that security become available either before or after bankruptcy, the creditor may set off the amount derived from the security, against the debt due to him. *Vide infra*. And see *Olive v. Smith*, 5 Taunt. 56. Where A. shipped goods to the amount of £2,000, on the joint account of himself, B. and C., but paid for them himself, and B. and C. were to pay him interest for their proportions, until the adventure should be terminated; C. was also indebted to A. in another sum of money; C. became bankrupt, and afterwards the proceeds of the adventure, £5,000, were

transmitted to A.: it was holden that A. might set off C.'s share of the profits against the debt which was owing to him by C. *French v. Frene, Cook*, 565. But when a bill of exchange, for instance, is lodged with a person by a trader, for a specific purpose, as to get it discounted or the like, and the trader becomes bankrupt, the party with whom it was lodged cannot claim to set it off against any debt the bankrupt may owe him; or if he have advanced any money upon it, the assignees, upon tendering to him that sum, may recover the amount of the bill in an action of trover. *Key v. Flint*, 1 *Moor*, 451, 8 *Taunt.* 21. *Ex p. Flint, Swanst.* 30.

Where part of the account between two mercantile houses which became bankrupt consists of bills proveable against both estates, there can be no proof in respect of the bills as between the two houses, unless there is a surplus after satisfying the holders of the bills. *Ex p. Rawson, Jac.* 274.

If the bankrupt be indebted to a creditor in two sums, for one of which the creditor may prove, for the other not; and the creditor be indebted to the bankrupt in a sum for business done or the like, the creditor may set off this latter sum against the debt he cannot prove, and may prove for the other debt. *Ex p. Boyl, Cook*, 571.

Debts, to be set off, however, must both be due in the same right: you cannot set off a debt to an executor against a debt due from him in his own right; *Bishop v. Church*, 3 *Atk.* 691; nor can even a debt due to a wife *dum sola*, be set off against a debt due from her husband. *Ex p. Blagden*, 2 *Rose*, 249, 19 *Ves.* 465. And the costs of judgment, as in case of nonsuit entered up against the plaintiff after he has become bankrupt, cannot be set off against the costs of an action by the bankrupt's assignees against the defendant in the former action. *West v. Pryce*, 2 *Bing.* 455. Where a regimental agent had received monies from the paymaster-general of the forces under the authority of a warrant of attorney from the colonel, and then became bankrupt, it was held that the colonel might set off such monies against a demand of the assignees for goods sold and delivered by the agent for the use of the regiment. *Knowles v. Maitland*, 6 *Dow. & R.* 312, and a debt to a surviving partner may be set off against a debt due from him in his own right. *French v. Andrade*, 6 *T. R.* 582. *Slipper v. Stidstone*, 5 *T. R.* 493. Where a legacy was left to the wife of a bankrupt by a person to whom he was largely indebted, and the wife died after the bankruptcy, it was holden that the executors might retain the legacy in part liquidation of the debt; *Ranking v. Barnard*, 5 *Mud.* 32; and in a similar case, but where the wife was still alive, the Vice Chancellor ordered one moiety of the legacy to be set off, and the other to be

settled on the wife for life, with remainder to the issue of the marriage. *Ex p. O'Ferrall*, 1 *Glyn & J.* 347.

We have hitherto been considering the set-off given by stat. 6 Geo. 4. c. 16. § 50, which makes the balance the debt in law, to be proved by the creditor, or recovered by the assignee: in which case, it is not necessary, in an action by the assignees, to plead or give notice of the set-off, although it is usual to do so. But, besides this, it has been holden, that in an action of assumpsit or debt by the assignees of a bankrupt, the defendant may set off a debt due to him by the bankrupt, in the ordinary way, under stat. 2 Geo. 2. c. 22. § 13; *Ridout v. Brough*, Cowp. 135. See *Graham v. Russell*, 2 *Marsh.* 561, 5 *M. & S.* 498; in which case the defendant must plead or give notice of the set off.

In all cases where the assignees of a bankrupt have a cause of action against a person who is not in fairness entitled to a set-off, if they have the option of suing either by action *ex contractu*, as assumpsit, debt, &c., or by action *ex delicto*, as trover, case, &c. they should adopt the latter; for in actions *ex delicto* the defendant cannot set off any debt due to him by the bankrupt. See *Wilkins v. Carmichael*, 1 *Doug.* 101. *Key v. Flint*, 8 *Taunt.* 21. *Raphael v. Birdwood*, 5 *Price*, 604. Where a bankrupt, on the eve of his bankruptcy, sold and delivered goods to one of his creditors, for the purpose of giving him a fraudulent preference, and the assignees afterwards brought an action of assumpsit against him, to recover the amount of the goods: it was holden that although the assignee might have disaffirmed the contract of the bankrupt, and have recovered the value of the goods in trover, in which case there could have been no set-off; yet, as they had sued in assumpsit, and thereby affirmed the contract, the creditor was entitled to set off his debt. *Smith v. Hodson*, 4 *T.R.* 211. But where the holder of an acceptance of a trader, who was known to be in bad circumstances, agreed with the defendant, as a mode of covering the amount of it, that it should be indorsed to him, and that he should purchase goods of the trader to the same amount; which was accordingly done, without communicating to the trader that the defendant was then the holder of his acceptance: the trader having become bankrupt, and an action of assumpsit being brought by his assignees for the amount of the goods, it was holden that the defendant could not set off the amount of the bankrupt's acceptance, for he did not hold it in his own right, but in effect for the person who had indorsed it to him. *Fair v. M'Iver*, 16 *East*, 130.

Care should be taken by creditors to avail themselves of a set-off, wherever they may legally do so. But if, by mistake, a creditor pay the assignees the whole amount of his debt to the bankrupt, without deducting his set-off, he may afterwards recover it



from the assignees, as money had and received to his use. *Bize v. Dickson*, 1 T. R. 285.

*Proof by sureties.*] Formerly a debt, for which a person was liable merely as surety, and which was not paid or satisfied by him until after the bankruptcy of the principal, could not be proved by him, and was consequently not barred by the certificate. See 2 W. Bl. 840. 3 Wils. 13. 528. 1 Doug. 166. 1 T. R. 599. and see 2 T. R. 100. 640. 7 T. R. 97. 364. This was in a great measure remedied by one of the repealed statutes (49 Geo. 3. c. 121. § 8), which, however, did not include the case of bail. 4 B. & A. 493. 6 Taunt. 329, 2 Marsh. 192. But now, by stat. 6 Geo. 4. c. 16. § 52, any person who at the issuing the commission shall be surety or liable for any debt of the bankrupt, or bail for the bankrupt, either to the sheriff or to the action, if he shall have paid the debt, or any part thereof in discharge of the whole debt (although he may have paid the same after the commission issued), if the creditor shall have proved his debt under the commission, shall be entitled to stand in the place of such creditor as to the dividends and all other rights under the said commission which such creditor possessed or would be entitled to in respect of such proof; or if the creditor shall not have proved under the commission, such surety or person liable, or bail, shall be entitled to prove his demand in respect of such payment as a debt under the commission, not disturbing the former dividends, and may receive dividends with the other creditors, although he may have become surety liable or bail as aforesaid, after an act of bankruptcy committed by such bankrupt, provided that such person had not, when he became such surety or bail, or so liable as aforesaid, notice of any act of bankruptcy by such bankrupt committed.

And it seems he may also prove the costs and expenses he has been put to in consequence of his being obliged to pay the debt; see *Ex p. Marshall*, 1 Atk. 261; at least, the certificate is a bar to any action for them by the surety. *Van Sandau v. Corsbie*, 3 B. & A. 13.

Every person who has made himself legally liable for the payment of such a debt, is a surety within the meaning of the act. If a man accept, or draw, or even indorse a bill of exchange, or promissory note, for the accommodation of a trader, who becomes bankrupt before payment, he is a surety within the meaning of the act. *Ex p. Yonge*, 2 Rose, 40, 3 V. & B. 31. *Ex p. Lloyd*, 1 Rose. 4. *Stedman v. Martinnant*, 13 East, 427. and see *Ex p. Read*, 1 Glyn & J. 224. *Van Sandau v. Corsbie*, 3 B. & A. 13. *Ex p. Lobbon*, 17 Ves. 334. So a man who joins a trader in a bond to the crown, as surety for the trader's duly accounting

&c. as subdistributor of stamps, is a surety within the meaning of the act. *Westcott v. Hedges*, 5 B. & A. 12. See *Brookes v. Lloyd*, 1 T. R. 17. Even where a person, who retired from a partnership, upon an undertaking of his partner to pay the outstanding debts, was afterwards, upon the partner's becoming bankrupt, obliged to pay some of the partnership debts, it was holden that he was a surety within the meaning of the act. *Wood v. Dodgsons* 2 M. & S. 195, 2 Rose, 47. and see *Parker v. Ramsbottom*, 5 D. & R. 138.

But, to bring a case within the meaning of this section of the act, the debt for which the party is surety, must be a subsisting debt, at the time of the issuing the commission. For instance, if a man be surety for the payment of a trader's rent, and no rent be due at the time of suing out a commission of bankrupt, against the trader, there the surety, although he pay rent afterwards accruing, shall not prove the amount upon the bankrupt's estate. *M'Dougal v. Patton*, 2 Moor, 644, 8 Taunt. 584. See *Ex p. Minet*, 14 Ves. 189.

The surety must pay or satisfy the debt, before he can prove for it upon the bankrupt's estate. *Ex p. Findon*, Cook, 170. *Ex p. Brown*. Id. *Young v. Taylor*, 8 Taunt. 315, 2 Moor, 326. See *Toussaint v. Martinnant*, 2 T. R. 100, *semb. cont.* and see *Martin v. Brecknell*, 2 M. & S. 39. Where, after the bankruptcy and certificate of the principal, the surety joined him in a new bond to the representative of the creditor, and the old bond was delivered up to the surety: this was holden not to be a payment by the surety, within the meaning of the act. *Ex p. Serjeant & al.* 1 Glyn & J. 183. 2 Glyn & J. 23. It is said that if the surety be taken in execution for the debt, it is such a satisfaction of it as to enable him to prove it; *Taylor v. Mills*, Cowp. 525. *Crookshank v. Thompson*, 2 Str. 1160. 3 Wills. 16. *Chilton v. Whiffin*, 3 Wils. 13; but this is at least doubtful. And he must have paid either the whole debt, or a part thereof in discharge of the whole. When a surety paid a part of the debt, and the creditor gave him an indemnity from personal liability as to the remainder, this was holden not to be a payment of part in discharge of the whole debt, within the meaning of the statute, and consequently that the certificate of the debtor was no bar to an action by the surety for the sum thus paid by him. *Soutten v. Soutten*, 1 D. & R. 521, 5 B. & A. 852. But where a surety, who had joined in a bond in a penalty, conditioned for the payment of sums to be advanced generally, paid the amount of the penalty, this was holden to be a payment of the whole debt, although the obligee had in fact advanced to the bankrupt, and proved upon his estate, for a larger sum. *Ex p. Rushforth*, 10 Ves. 409.

When the surety has paid the debt, or part of it in discharge of the whole, he may prove the sum he has thus paid as a debt upon the estate, if the original creditor have not already proved. If the creditor have proved, then the surety shall stand in the place of the creditor as to dividends, and "all other rights" (such as the choice of assignees, signing the certificate, &c. see *Ex p. Geo. & al.*, 1 Glyn & J. 320); to which the creditor was entitled. See *Ex p. Brook*, 2 Ross, 384. *Paley v. Field*, 12 Ves. 435. *Ex p. Matthews*, 6 Ves. 285. If, however, the creditor will not prove, the surety, it should seem, may compel him to do so; see *Beardmore v. Cruttsenden*, Cook, 282, and see 10 Ves. 414; for otherwise he would lose the benefit of the dividends, if he were not able to pay the debt before they were declared.

The repealed act, 49 Geo. 3. c. 121. § 8, which was nearly the same as the above section of the new statute, was held not to extend to a surety for the payment of an annuity, except as far as related to the arrears due at the date of the commission; *Flanagan v. Watkins*, 3 B. & A. 186, 1 Bing, 413. *Walsh v. Walsh*, 4 M. & S. 333; the surety could not prove upon the estate the value of the annuity, although he had paid it to the grantee; *Id.*; nor would a court of equity relieve the grantor, even after his certificate, from the claim of his surety. *Flanagan v. Watkins*, 1 Glyn & J. 199. But now, by stat. 6 Geo. 4. c. 16. § 55, it shall not be lawful for any person entitled to any annuity granted by any bankrupt, to sue any person who may be collateral surety for the payment of such annuity, until such annuitant shall have proved under the commission against such bankrupt for the value of such annuity, and for the payment [Qu. arrears] thereof; and if such surety after such proof pay the amount proved as aforesaid, he shall be thereby discharged from all claims in respect of such annuity; and if such surety shall not (before any payment of the said annuity subsequent to the bankruptcy shall have become due) pay the sum so proved as aforesaid, he may be said [sic. Qu. sued] for the accruing payments of such annuity, until such annuitant shall have been paid or satisfied the amount so proved, with interest thereon at the rate of four *per cent. per annum*, from the time of notice of such proof, and of the amount thereof being given to such surety; and after such payment or satisfaction, such surety shall stand in the place of such annuitant in respect of such proof as aforesaid, to the amount so paid as aforesaid by such surety; and the certificate of the bankrupt shall be of discharge to him from all claims of such annuitant, or of such surety, in respect of such annuity; provided that such surety shall be entitled to credit in account with such annuitant

for any dividends received by such annuitant under the commission, before such surety shall have fully paid or satisfied the amount so proved, as aforesaid.

[*Proof by Creditors holding Securities.*] By stat. 6 Geo. 4. c. 16. § 108. no creditor having security for his debt, or having made any attachment in *London* or any other place, by virtue of any custom there used, of the goods and chattels of the bankrupt, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect to any execution or extent served and levied, by seizure upon, or any mortgage of or lien upon, any part of the property of such bankrupt before the bankruptcy; provided that no creditor, though for a valuable consideration, who shall sue out execution upon any judgment obtained by default, confession, or *nil dicit*, shall avail himself of such execution to the prejudice of other fair creditors, but shall be paid rateably with such creditors.

There is some want of certainty in this section, owing to the manner in which it is constructed. If it mean that "no creditor having security for his debt"—"of the goods and chattels of the bankrupt," that is to say, if the words "of the goods and chattels of the bankrupt," be deemed the genitive case of "security" as well as of "attachment," it introduces no new rule; for the practice was formerly the same as stated in this section, although not expressly sanctioned by any specific enactment. But if it mean that "no creditor having security for his debt," "shall receive upon any such security more than a rateable part of such debt," (with the exceptions mentioned in this section), then it introduces a very material alteration in the law relating to proofs under a commission; for in such a case, no creditor having the security of a third person, or the joint security of the bankrupt and a third person, for his debt, shall be allowed to prove, unless he first give up his security. I own I incline to the former opinion. It may be safest, however, on this, as on a former occasion (*ante*, p. 84.), to state the law as it was before this statute, and let the reader determine for himself the alteration this section has made in the law in this respect.

If the creditor held a security from the bankrupt alone, for his debt, he would not be allowed to prove for his debt upon the estate, unless he first gave up the security for the general benefit of the creditors. *Cook*, 144. *Ex. p. Bloxham*, 6 *Ves.* 449. 660. As, for instance, where a creditor, upon hearing that his debtor was about to fail, obtained goods from him to the amount of part of his debt, and the debtor afterwards became bankrupt: he was not allowed to prove for his debt or any part of it, unless he would consent to give up the goods. *Ex p. Smith*, 3

*Bro. 46. and see Ex p. Batelay 1 Glyn & J. 272.* And if, the creditor gave up his security, and proved, he would not afterwards be allowed to retract his proof; *Ex p. Downes, 18 Ves., 290*; or if he proved without discovering that he had such a security, the Lord Chancellor afterwards, upon petition, would order the proof to be expunged. See *Ex p. Hossack, Buck, 390.* Under special circumstances a creditor was permitted to prove his debt, and also to proceed on a bond which was pledged as a security for the debt. *Ex p. Smith, 2. Glyn, & J. 105.*

And formerly there was no difference in this respect between securities upon real or personal property, and mere personal security. But, by an order of Lord Loughborough, 8 March, 1794, it was ordered that, upon application to the commissioners by any person claiming to be mortgagee of any part of the bankrupt's estate or effects, the commissioners shall enquire whether such person is a mortgagee, and for what consideration, and under what circumstances; and if the commissioners shall find that such person is a mortgagee of any part of the bankrupt's estate or effects, and do sufficient objection appear to his title to the sum claimed by him under the mortgage, they shall then proceed to take an account of the principal, interest, and costs, due upon such mortgage, and of the rents and profits received by such mortgage, if in possession; and that the commissioners do then cause due notice to be given in the London Gazette and in such other of the public papers as they shall think fit, when and where the said mortgaged premises are to be sold before them; or by public auction at any other place, if they shall so think fit, and that such sale be made accordingly; and that all proper parties should join in the conveyance to the purchaser, as the commissioners should direct. And it was further ordered that the monies arising from such sale, should be applied, in the first place, in payment of the expenses attending such sale, and then in payment and satisfaction of what should be found due to such mortgagee, for principal, interest and costs, and that the surplus, if any, be paid to the assignees; but in case the monies arising from such sale should be found insufficient to pay what should be found due to such mortgagee, then that such mortgagee should be admitted a creditor under the commission for the deficiency, and receive dividends rateably with the rest of the creditors, but so as not to disturb any dividends already made. And for the better making of such enquiry, and taking of such account as aforesaid, and making a title to such purchasers, it was further ordered that all parties should be examined by the commissioners upon interrogatories or otherwise, and should produce to the commissioners, upon oath, all deeds, papers, and writings in their respective

custody of power, relating to the estate and effects of the bankrupt, as the commissioners should direct. Under this order, the commissioners can order a sale of mortgaged premises, only in cases where the creditor applies to them for that purpose: they cannot dispose of such creditor's security without his consent; *Exp. Jackson*, 5 Ves. 357; they can only sell the equity of redemption. And such an application of course is never made, if the mortgage be a sufficient security for the debt.

A mortgage by deposit of deeds for obtaining credit will not cover advances made previously to the deposit. *Mountford v. Scott*, 1 Turn, 274.

An equitable mortgagee of lands of the bankrupt for the sum of £1,200, advances to him the further sum of £1,350, upon the security of a warrant of attorney, afterwards the bankrupt executes to the mortgagee a conveyance of the lands in trust to sell and after payment of the £1,200 and interest, to pay the surplus to the bankrupt and on the same day the conveyance is executed, judgment is entered up, and execution levied under the warrant of attorney for the £1,350, and part of that sum is satisfied by the levy.—Held, that the mortgagee was not entitled to tack the residue of the judgment debt to the mortgage. *Exp. Pettit*, 2 Glyn & J. 47.

In calculating the sum to which the mortgagee is entitled, the commissioners, if the security be insufficient to satisfy the whole debt, allow interest only to the date of the commission: but if the security be sufficient, the assignees cannot redeem without paying interest to the time of redemption. *Cook*, 206. The costs of the sale, &c. must be paid out of the produce of the property sold; and therefore where the mortgagee himself was the purchaser, it was holden that he was liable, in an action for money paid, to reimburse the solicitor to the commission, the expenses of the sale. *Bowles v. Perring*, 2 B. & B. 457, 5 Moor, 296. And it may be necessary here to state, that a mortgagee cannot be a bidder at the sale, unless he have previously obtained leave of the Lord Chancellor for that purpose. See *Exp. Marsh*, 1 Mad. 148. *Exp. Du Cane*, Buck, 18. The sale must be under the management of the solicitors to the assignees. *Exp. Marsh*, 1 Mad. 148.

The above order requires all proper parties to join in the conveyance to the purchaser. But it has been decided that the Lord Chancellor has no jurisdiction in bankruptcy to compel a second mortgagee, who does not claim under the commission, but rests upon his security, to join in the sale or conveyance; the proper remedy in such a case is by bill. *Exp. Jackson*, 5 Ves. 357. and see *Exp. Topham*, 1 Mad. 38. A second mortgagee, however, may apply under the above order.

Equitable mortgagees, that is to say, creditors with whom the

bankrupt has deposited the title deeds of estates as security for their debts, although not within the meaning of the above order, may, upon petition, if the Lord Chancellor be satisfied of their claims, obtain an order in substance the same as the above general order, namely, that the commissioners should ascertain what is due to them in respect of their mortgages, that the property be sold, the produce disposed of as under the above order, and the mortgagee prove for any balance that may be due to him. See *Ex p. Garbutt*, 2 Ross, 78. *Ex p. Jennings*, 2 Swanst. 360. *Ex p. Hodgson*, 1 Glyn & J. 12. *Ex p. Meux*, Id. 116. *Ex p. Lloyd*, Id. 389. *Ex p. Alexander*, Id. 409. *Ex p. Wetherell*, 11 Ves. 398. *Ex p. Langtons*, 17 Ves. 230. and see 1 Glyn & J. 101. *Ex p. Bagshole*, 1 Ross, 432. *Ex p. Anley*, Buck, 202. *Ex p. Fisher*, 3 Mad. 159, Buck, 239. And where a person enters into an agreement for the sale of lands to a trader, who afterwards becomes bankrupt before the lands are conveyed or paid for, the vendor has quasi an equitable mortgage upon the lands for the amount of the purchase money, and may either by bill, *Bowles v. Rogers*, Cook, 146, or by petition, *Ex p. Gyde*, 1 Glyn & J. 323, have the lands sold, and be allowed to prove for the difference between the purchase money and the produce of the re-sale.

In like manner, the grantee of a rent charge, or annuity, real property, where the grantor becomes bankrupt, obtain an order that the commissioners lay out of the annuity, as directed, *ante*, p. 101, the arrears: that the property be sold: that the proceeds, 1, in payment of the costs, 2, in payment of the arrears, and other proceedings incident thereto; 3, in payment of the arrears due at the date of the commission; 4, in payment of the value of the annuity, as ascertained by the commissioners: and that the grantee should be admitted to prove for the deficiency. *Ex p. Slack*, 1 Glyn & J. 346.

As to pledges, namely, where personal property is delivered to the creditor as a pledge or security for a debt: they are considered within the principle of the above order, and the commissioners, upon application, will order them to be sold, and allow the creditor to prove for any balance that may be due to him, in the same manner as in the case of a mortgage of real property; *Ex p. Hillier*, Cook, 146, and even the creditor's selling the pledge, without applying to the commissioners, has been holden, in the absence of all fraud, not to destroy his right to prove for the balance. *Ex p. Geller*, 2 Mad. 262. Where a debtor gives a bill of exchange to his creditor, without indorsing it, and becomes bankrupt, the bill in such a case is deemed, either a pledge or a purchase, according to the intent of the parties at the time: if a pledge, the assignee may insist on its being sold,

before the creditor is allowed to prove; *Ex p. Troughton*, Cook, 147. *Ex p. Gardener*, Id. *Ex p. Smith*, Id.; if a purchase, it goes in liquidation of so much of the original debt, and the creditor can prove for the balance only. *Ex p. Whitter*, Cook, 147. *Ex p. Roberts*, Id. *Ex p. Smith*, Id. and see *Ex p. De Tastet*, 1 Rose, 324, 1 V. & B. 280. *Ex p. Martell*, 1 Rose, 325, See *Chalmers v. Page*, 3 B. & A. 697.

Where a creditor has a lien upon property of the bankrupt in his hands, for the amount of his debt, or any part of it, the commissioners, upon application, will order the property to be sold, (if the assignees will not redeem it), and allow the creditor to prove for any balance that may be due to him, in the same manner as in the case of a mortgage. If, however, instead of applying to have the property sold, the party thus having a lien upon it were to prove upon the estate of the bankrupt for the whole amount of his debt, the Lord Chancellor, upon petition, would order the property to be delivered up for the benefit of the creditors, or to be sold and the proof to be reduced; and if the creditor, by reason of his having proved for the whole amount of his debt, have affected the interest or rights of others, such as voting in the choice of assignees, signing the bankrupt's certificate, &c. he will not in general be allowed to retract his proof, but will be compelled to give up the property. *Ex p. Solomon*, 1 Glyn & J. 25.

And in all these cases of mortgage, pledge, lien, &c. if the creditor wish to prove upon the estate, for the purpose of voting in the choice of assignees, signing the bankrupt's certificate, &c. before the property in mortgage, &c. can be sold, he may, upon petition, in the absence of fraud, obtain leave to have the security taken at a certain value, and to prove for the difference. *Ex p. Nunn*, 1 Rose, 322. *Ex p. Greenwood*, Buck, 327. and see *Ex p. Barclay*, 1 Glyn & J. 272. *Ex p. Hopley*, 1 Jac. & W. 423.

Where a creditor has two debts due to him by a bankrupt, one of which is provable, the other not, and he holds a security generally, which has not been specifically made applicable to either of the debts, he may apply it to the debt which is not proveable, and prove the other upon the bankrupt's estate. *Ex p. Havard*, Cook, 147. *Ex p. Arkley*, Id. 149.

Formerly, where the creditor had seized any of the bankrupt's property under a foreign attachment, he was not allowed to prove, unless he gave up the attachment. *Ex p. Smith*, Cook, 336. And this is now in substance enacted by the above section of the new statute.

Formerly, if a creditor levied upon the goods of a bankrupt, before his bankruptcy, for the amount of part of his debt, he



might prove upon the estate for the residue. *Ex p. Hopley*, 1 Glyn & J. 63. 2 Jac. & W. 220. and see *Ex p. Hopley*, 1 Jac. & W. 423. The same is in substance enacted by the above section of the new statute, which, however, excepts all executions upon judgments by default, confession, or *nil dicit*; the two latter, of course, include judgments on cognovits and warrants of attorney; but "judgments by default" must, it should seem, be construed to mean such judgments in actions of debt only, for in no other action can execution against a defendant's goods be sued out on a judgment by default.

An execution issued upon a judgment obtained by default, confession, or *nil dicit*, and served and levied upon the property of a bankrupt before his bankruptcy, is not made void by this section; but the plaintiff in such execution must share rateably with the other creditors. *Taylor v. Taylor*, 5 B. & C. 392.

The term "mortgage" in the above section of the New Statute, will be construed to include equitable mortgages, and probably rent charges; and the term "lien," to include all pledges of mere personal goods.

We have hitherto treated of securities of the bankrupt only. But previously to this New Statute, if a creditor held the security of a third person, or the joint security of the bankrupt and a third person, he might prove upon the estate for the whole amount of his debt, and also retain his security in order to recover what he could from the co-security, provided he did not receive more than 20s. in the pound upon the whole; *Cook*, 144, 145. *Ex p. Goodman*, 3 Med. 378. *Ex p. Parr*, 1 Rose, 76, 18 Ves. 65. *Ex p. Bloxham*, 6 Ves. 449. 600. and see *Ex p. De Tastet*, 1 Rose, 324. *Ex p. Wildman*, 1 Atk. 109. *Ex p. Bennet*, 2 Atk. 527; and this perhaps will continue to be the practice under the new Statute. *Vide supra*. Where a creditor proved a debt, and held at the time a bill of exchange drawn by the bankrupt and accepted by a third person as security for a part of it; he afterwards received 15s. in the pound on the amount of the bill from the assignees to the acceptor, and 5s. in the pound on the whole amount of his debt from the bankrupt's estate: upon petition, he was restrained from receiving from the bankrupt's estate any further dividend on so much of his debt as was covered by the bill. *Ex p. Rufford*, Glyn & J. 41.

Every written security the creditor holds for his debt, must be exhibited to the commissioners at the time of his proving, in order that the commissioners may determine whether they shall be delivered up for the general benefit of the creditors, or be holden by the creditor; in which latter case, the commissioners write upon them a memorandum of their being exhibited. See the form of this exhibit, ii. p. 45. Even a judgment, it seems,

cannot be proved, without producing an office copy of it. *Ex p. Concanan, Cook*, 153. But where a bill of exchange was lost, proof was ordered to be received, upon an indemnity. *Ex p. Greenaway*, 6 Ves. 812.

[*Proof upon Bottomry or Respondentia Bonds, or Policies of Insurance.*] By stat. 6 Geo. 4. c. 16. § 53, the obligee in any bottomry or respondentia bond, and the assured in any policy of insurance made upon good and valuable consideration, shall be admitted to claim, and after the loss or contingency shall have happened, to prove his debt or demand in respect thereof, and receive dividends with the other creditors as if the loss or contingency had happened before the issuing the commission against such obligor or insurer; and that the person effecting any policy of insurance upon ships or goods with any person, as a subscriber or underwriter, becoming bankrupt, shall be entitled to prove any loss to which such bankrupt shall be liable in respect of such subscription, although the person so effecting such policy was not beneficially interested in such ships or goods, in case the person or persons so interested is not or are not within the United Realm. See the forms of those claims, ii. p. 48, 44.

This statute extends to insurances upon lives. See *Cox v. Lister*, 1 Doug. 186. As to respondentia creditors, see *Ex p. Edwards*, 4 Rose, 130.

[*Proof by wife, child, &c.*] Marriage being deemed in law a valuable consideration, contracts to settle money in consideration of it, made before marriage, or after marriage in pursuance of articles made before, create debts, proveable in the same manner and to the same extent as contracts founded upon any other valuable consideration. Therefore a covenant or bond by the husband to pay or vest in trustees, during his life-time, a sum of money for the benefit of the wife or issue after his death, *Ex p. Granger*, 10 Ves. 349. *Ex p. Dicken*, Buck, 115. *Ex p. Winchester*, 1 Atk. 117. *Ex p. Campbell*, 16 Ves. 244. *Ex p. Gardner*, 11 Ves. 40. *Montefiori v. Montefiori*, 1 W. Bl. 363. and see *Ex p. Brown*, Cook, 240; *Shaw v. Jakeman*, 4 East, 201, or to pay or vest it upon the death of himself or wife, whichever should first happen, *Ex p. Smith*, Cook, 238. See *Brandon v. Brandon*, 2 Wils. C. R. 14, or upon the death of himself, with interest in the mean time, and default be made in payment of the interest before his bankruptcy, *Ex p. Elder*, 2 Mad. 282, may be proved upon the estate of the husband, if he afterwards become bankrupt; but a bond or covenant that his executors shall pay or

vest money, for the like purpose, after his death, without interest in the mean time, or without default being made in the payment of interest, cannot be proved, even although the bankrupt die before any dividend be made. *Tully v. Sparkes*, *L. Raym.* 1546. *Ex p. Barker*, 9 *Ves.* 110. *Bassevi v. Serra*, 14 *Ves.* 313, 3 *Mad. App.* 674. *Ex p. Caswell*, a *P. Wms.* 497. *Ex p. Jeffries*, 7 *Vin. Abr.* 72. pl. 7. *Ex p. King*, *Davies*, 254. *Ex p. Groome*, 1 *Atk.* 115, *Davies*, 524. *Ex p. Greenaway*, 1 *Atk.* 113. *Ex p. Michell*, *Id.* 120. *Anon.* 3 *Wils.* 271. *Ex p. Tuaffe*, 1 *Glyn & J.* 110. See *Re Murphy*, 1 *Sch. & Lef.* 44. *Re Meaghan*, *Id.* 179. *Holland v. Calliford*, 2 *Vern.* 662. *Sleech v. Thorington*, 2 *Ves. Sen.* 560, because it depends entirely upon a contingency, (namely, the wife or issue surviving the bankrupt), whether any sum shall ever become payable by virtue of the bond or covenant, or not. It has been holden that even a covenant in a settlement to transfer stock into the names of trustees upon receiving one month's notice, with liberty to the trustees to forbear giving the notice during the life of the husband, where no transfer was made or notice given before the bankruptcy, was merely a contingent debt, and not proveable under the commission. *Ex p. Alcock*, 1 *Rose*, 323, 1 *V. & B.* 176. These are of course decisions upon the repealed acts; whether the law in this respect has not been altered by the present statute, which allows contingent debts to be proved on the happening of the contingency (*see ante*, p. 89), is a matter deserving of consideration.

So if, by the bond or covenant, the money to be settled is made payable upon the bankruptcy or insolvency of the obligor or covenantor, it cannot be proved, *Ex p. Hill*, *Cook*, 251. *Ex p. Bennett*. *Id.* 253. *Higginbotham v. Holne*, 19 *Ves.* 98. *Ex p. Hodgson*, *Id.* 206. *Lockyer v. Savage*, 2 *Str.* 947. *Stratton v. Hale*, 2 *Bro.* 490. *Ex p. Cook*, 8 *Ves.* 353. *Ex p. Young*, 3 *Mad.* 124, *Buck*, 179, unless the money so settled be the property of the wife, *Ex p. Hinton*, 14 *Ves.* 598. *Re Meaghan*, 1 *Sch. & Lef.* 179, or an equivalent for it. *Higginson* 7. *Kelly*, 1 *Ball & Beatty*, 252.

And in cases where it is allowed to be proved, if the bankrupt be entitled to a life or other interest in it, the like interest in the dividends will go to the assignees, and the residue according to the terms of the settlement. See *Ex p. Mitford*, 1 *Bro.* 398. *Studdy v. Trincombe*, 5 *Ves.* 698.

So, if a father, on the marriage of his daughter, give a bond for her portion to his intended son-in-law, it may be proved upon the father's estate if he become bankrupt, provided the money were to be payable in his life-time, or after his death with interest in the mean time, and default be made in payment of the

interest before the bankruptcy. *Ex p. Winchester, Davies*, 320, 1 Atk. 116.

Where a father receives money, which is his child's property, and becomes bankrupt, the child will be allowed to prove upon his estate for the amount. *See Ex p. Beilby & al.* 1 Glyn & J. 167. Even for the amount of the child's earnings, received by the father whilst the child lived with him, the child, under circumstances, has been allowed to prove upon the father's estate. *Ex p. Macklin*, 2 Ves. Sen. 675.

As to proofs by servants and apprentices, *see ante*, p. 87.

## 2. How Proved.

*By whom.*] By stat. 6 Geo. 4. c. 16. § 46, at the three several meetings so appointed by the commissioners as aforesaid, (*see ante*, p. 70.) and at every other meeting by them appointed for proof of debts (whereof, and of the purport whereof, ten days notice shall have been given in the London Gazette), every creditor of the bankrupt may prove his debt by his own oath; and all bodies politic and public companies incorporated or authorized to sue or bring actions, either by charter or act of parliament, may prove by an agent, provided such agent shall in his deposition swear that he is such agent as aforesaid, and that he is authorized to make such proof. *See Ex p. Bank of England*, 1 Swanst. 10. Also an agent who effects a policy of insurance, may prove for a loss upon the estate of the underwriter, if his principal be not within the United Kingdom. 6 Geo. 4. c. 16, § 53, *ante*, p. 94. But in no other case is an agent permitted to prove, unless specially authorized by some particular statute, or, perhaps in those cases in which he might maintain an action for the amount of the debt in his own name; he may claim indeed, but he cannot prove. This is creative of difficulty in some cases: for instance, in the great coal and other mining concerns in the North and West of England, the agent is often the only person who can conscientiously swear to the debt; the proprietor himself knows little, if any thing, about it.

The collector of taxes may prove for their amount, producing at the time his appointment or deputation, to satisfy the commissioners of its legality. *Green*, 116. and *see Lloyd v. Heathcote*, 2 B. & B. 388. But if the collector himself become bankrupt, after having received the taxes from the inhabitants but not paid the money over, *Ex p. Child*, 1 Atk. 111, or if the bankrupt

be indebted to the parish as overseer, *Ex p. Exleigh*, 6 Ves. 811, or the like, an inhabitant of the parish will be allowed to prove on behalf of himself and the rest of the parishioners, stating in his deposition that neither he, nor any other of the parishioners to his knowledge or belief, had received any security; &c. If there be joint collectors; however, the solvent collector should prove. *Ex p. Muggeridge & al. Cook*, 151.

Trustees or one of them should prove, and receive the dividends; because they hold the dividends, when received, upon the same trusts as they hold the original debt. The *Cestui que trust*, however, should join in the proof. *Green*, 149. *Ex p. Dubois, Cox*, 810.

A guardian, upon petition, will, it seems, be allowed to prove for an infant. *Ex p. Belton*, 1 Atk. 251. *Walcot v. Hall, & Bro.* 305. Where the creditor has become a lunatic, a person who had undertaken the management of his business was permitted to prove for him. *Ex p. Maltby*, 1 Rose, 387.

A debt due to a testator must be proved by his executor; a debt due to an intestate, by his administrator; and the probate of the will, or letters of administration, should be produced at the time of proof.

If a creditor become bankrupt before proof, his assignees must prove; but the creditor should join in the proof. *Cook*, 153.

Even the bankrupt himself may prove upon his own estate, for a debt due to him as sole executor or the like, *Cook*, 163. *Ex p. Marsh*, 1 Atk. 158. *Ex p. Richardson*, Buck, 202, 3 Mad. 138. and see *Ex p. Atkins*, Buck, 479. *Ex p. Watson*, 2 V. & B. 414, upon his obtaining an order to that effect from the court; *Ex p. Shaw & al.* 1 Glyn & J. 127. and see *Id.* 163; and the chancellor in such a case will guard against the possibility of any misapplication of the dividends, by ordering them to be paid into court. *Ex p. Leake*, 2 Bro. 596. *Ex p. Brooks*, *Cook*, 163. But if the bankrupt and another be joint executors, &c. then the solvent executor alone shall prove. *Semb. Ex p. Shakeshaft*, 3 Bro. 197. And where an executor converted the testator's property to his own use, and became bankrupt, the court, upon petition, permitted one of the legatees to prove on behalf of himself and the other legatees, with a direction that the dividends should be paid into the bank. *Ex p. Moody*, 2 Rose, 413.

The assignee of a chose in action, as, for instance, a bond or other debt, may prove upon the estate of the obligor or debtor; but the original obligee or creditor must join with him in the proof. *Ante*, p. 75. 78.

As to proofs by sureties, see *ante*, p. 96; and by persons holding securities, see *ante*, p. 99.

One of the several partners may prove for himself and co-partners. *Ex p. Hodgkinson*, 19 Ves. 291.

*When and where.*] Creditors can prove only at a public meeting, namely, at some one of the three public meetings appointed by the commissioners at the private meeting, and advertised in the Gazette, as already mentioned, *ante*, p. 107, or at some other "meeting by them appointed for proof of debts, whereof and of the purport whereof, ten days notice shall have been given in the London Gazette." 4 G. 4. c. 16. § 46, *supra*. Therefore, there is no time in fact limited for proving; if the creditor prove at any time before a final dividend is declared, he will be intitled to his dividend. *See post*, Sect. 13.

*How proved.*] In general, the party intitled to prove must attend personally before the commissioners, and sign a written deposition, upon oath, as to the debt; *see the forms*, ii. p. 29—43. *post*, as to the petitioning creditor, his personal attendance, we have seen, (*ante*, p. 68,) will not be dispensed with. But by 6 G. 4. c. 16. § 46, if any creditor shall live remote from the place of the meeting of the commissioners, he may prove by affidavit, sworn before a master in chancery, ordinary or extraordinary; or if such creditor shall live out of England, by affidavit sworn before a magistrate where such creditor shall be residing, and attested by a notary public, British minister, or consul; and no creditor shall pay any contribution on account of any such debt. Also, by the same section, it shall be lawful for the said commissioners to examine upon oath, either by word of mouth or by interrogatories in writing, every person claiming to prove a debt under the said commission, or to require such further proof, and to examine such other persons in relation thereto, as they shall think fit. *See Ex p. Woolley & al.* 1 Glyn & J. 395. *Ex p. Symes*, 11 Ves. 521.

Where a creditor residing at a distance, after making an affidavit of his debt, but before the same was exhibited to the commissioners, died, the proof was holden to be irregular, and upon petition ordered to be expunged, even although two dividends had been paid upon it. *Ex p. Bridge*, 4 Mad. 269.

Any of the creditors, or even the bankrupt himself, may object to a proof. And if the commissioners have reason to doubt the fairness of the proof, (for they are to judge from the evidence adduced to them, whether a debt at all, or to the extent claimed, exist or not,) they may, notwithstanding the party's oath, reject the proof altogether, or admit it merely as a claim, in their discretion; *Ex p. Simpson*, 1 Atk. 70. *Ex p. Wood*, *Id.* 221; in which case, the creditor's only remedy is by petition. *Clarke v. Capon*, 2 Ves. 666. *See* 6 Geo. 4. c. 16. § 60, *post*, p. 114.

If the creditor takes a false oath, he is guilty of perjury. 6 G. 4. c. 16. § 99. *ante*, p. 18.

At the time the creditor proves his debt, he must exhibit to the commissioners all the securities he holds for it; *ante*, p. 104; indeed his deposition always contains a clause stating the securities (if any) that he holds for his debt, and he must exhibit all the securities there mentioned. So, if he prove for the amount of a judgment, he must produce an office copy of it. *Ex p. Williamson*, 1 *Atk.* 83. *ante*, p. 104. Where a bill of exchange, for which the holder intended to prove upon the estate of one of the parties, was lost, he was allowed, upon petition, to prove for the amount of it, upon giving an indemnity to the satisfaction of the commissioners. *Ex p. Greenaway*, 6 *Ves.* 812.

Also, if the creditor prove in *auter droit*, he must prove, not only the debt, but his title to prove it; an executor must produce the probate; an administrator, the letters of administration; a trustee, the deed of trust; and the like. *Vide Supra*.

It may be necessary to add, that a petitioning creditor is not bound to prove upon the estate a debt, the same or of the same amount with that upon which he struck the Docket. *Ex p. Bryant*, 1 *V. & B.* 214.

*How and in what cases claimed.]* If a creditor be absent, at such a distance as to make it probable that an affidavit of his debt may not be procured from him before a dividend shall be declared, a clerk or agent for him will be allowed to enter on the proceedings a claim for the amount; *see the form*, ii. p. 43. So, if a creditor be unable at the moment to ascertain the amount of his debt, from the accounts between him and the bankrupt not being balanced, or the like, the commissioners will allow him to enter a claim for what he may fairly judge to be the probable amount of the balance due to him; *see the form*, ii. p. 43. *See Goddard v. Vanderheyden*, 3 *Wils.* 271. The claim, in either case, must afterwards be substantiated by regular proof of the debt; and within a reasonable time, otherwise (unless sufficient cause be shewn to the contrary) the commissioners will strike it out.

The purpose for which a claim is entered, is to have a dividend reserved for the creditor upon his debt; and which dividend will afterwards be paid to him, upon his perfecting his proof. And the commissioners will in all cases give it this effect, if they have satisfactory grounds for believing that the debt actually exists, and that the creditor is really not able as yet to prove his debt from circumstances over which he has no control. Even if they strike out the claim, it does not prevent the creditor from afterwards proving his debt.

*Privilege of the Creditor from arrest.]* A creditor, attending before the commissioners to prove his debt, is privileged from arrest; and if arrested, the Lord Chancellor, upon application, will order him to be discharged, and probably make the parties concerned in the arrest pay the cost. *List's Case*, 2 V. & B. 373; 2 Rose, 24. and see 1 Atk. 54. 4 T. R. 377.

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### 3. Effect of Proof.

There are certain consequences attending upon a proof under a commission, which a creditor should well consider before he resorts to that measure.

1. By proving under the commission, a creditor relinquishes all securities of the bankrupt alone, which he may happen to hold for his debt: excepting mortgages, pledges, and property on which he has a lien, which he may procure to be sold, and prove for the balance, as we have already seen, *ante*, p. 99—104.

2. By stat. 6 G. 4. c. 16. § 59, no creditor has brought any action, or instituted any suit against any bankrupt, in respect of a demand prior to the bankruptcy, or which might have been proved as a debt under the commission against such bankrupt, shall prove a debt under such commission, or have any claim entered upon the proceedings under such commission, without relinquishing such action or suit; and in case such bankrupt shall be in prison or custody at the suit of or detained by such creditor, he shall not prove or claim as aforesaid, without giving a sufficient authority in writing for the discharge of such bankrupt; and the proving or claiming a debt under a commission by any creditor, shall be deemed an election by such creditor to take the benefit of such commission, with respect to the debt so proved or claimed: provided that such creditor shall not be liable to the payment to such bankrupt, or his assignees, of the costs of such action or suit so relinquished by him; and that where any such creditor shall have brought any action or suit against such bankrupt, jointly with any other person or persons, his relinquishing such action or suit against the bankrupt, shall not affect such action or suit against such other person or persons: provided also, that any creditor who shall have so elected to prove or claim as aforesaid, if the commission be afterwards superseded, may proceed in the action as if he had not so elected, and in bailable actions shall be at liberty to arrest the defendant *de novo*, if he has not put in bail below, or perfected



bail above, or if the defendant has put in or perfected such bail, to have recourse against such bail, by requiring the bail below put in and perfect bail above within the first eight days in term, after notice in the *London Gazette* of the superseding such commission, and by suing the bail upon their recognizance, if the condition thereof is broken.

This section is the same as a section in one of the repealed Acts, (49 Geo. 3. c. 121. § 14.), with the exception of the last clause relating to proceedings after a commission superseded; therefore the cases decided on the repealed section, may be considered as equally applicable to this. It is not necessary that there should be a formal discontinuance of the action or suit, before the plaintiff proves his debt, for the proof itself operates as a discontinuance of the action or suit; *Ex p. Woolley*, 1 *Rose*, 394, 2 *V. & B.* 253; and therefore it has been holden, that a creditor may tender a proof or claim, and is entitled to have the judgment of the commissioners upon his right to prove, before he discharges the bankrupt or discontinues the action; although he must discharge the bankrupt before he actually proves. *Ex p. Frith*, 1 *Glyn & J.* 165. But the bankrupt is entitled to have a suggestion of the fact of the plaintiff having proved, entered upon the record; before which the action is not legally terminated, so as to render further proceedings in it by either party irregular. *Kemp v. Potter*, 6 *Taunt.* 549. If a creditor, however, who has proved his debt, were afterwards to bring an action for it, or proceed in an action already brought, although this election could not be pleaded in bar, yet the court, in which such action was brought, would, upon application, stay the proceedings in it, or an application might be made to the Lord Chancellor to expunge the proof; *Harley v. Greenwood*, 5 *B. & A.* 95; or if the bankrupt were in custody at the suit of the creditor, the Lord Chancellor, upon petition, would order him to be discharged, and probably make the creditor pay the costs. A creditor may thus elect to come in under a commission, even although he have the bankrupt in custody in execution at his suit, provided he had him thus in execution before the issuing of the commission; 13 *Ves.* 183. *Cook*, 156; but if he take him in execution after the issuing of the commission, *Ex p. Hicklin*, *Cook*, 156. *Ex p. Caton*, *id.* 157. *Ex p. Knowell*, 13 *Ves.* 192. although this step be taken by the plaintiff's agent, without his privity or consent, *Ex p. Warder*, *Cook*, 157, or although the bankrupt be afterwards discharged out of custody, *Ex p. Bisson*, *Cook*, 157. *Ex p. Hewitt*, *id.*, he will not be allowed afterwards to prove under the commission, or if he prove, his proof upon application will be ordered to be expunged. But merely suing out an attachment against a bankrupt, after the issuing of

the commission, in a suit instituted before, *Ex p. Benjamin*, Buck, 41, or even commencing an action after the issuing of the commission, and proceeding in it to judgment, but not of execution, *Ex p. Arncliffe*, 18 Ves. 231. and see *Ex p. Candall*, 6 Ves. 446, will not be deemed such an election by the creditor to proceed at law, as will preclude him from relinquishing his proceedings and proving his debt under the commission. In strictness, perhaps, nothing but actual proof or claim of the debt, ought to be deemed a relinquishment of an action or suit already brought, or of the creditor's right to commence one; and therefore, merely being assignee to the estate, unless the party be also a creditor and have proved his debt, has been holden to be no election. *Ex p. Ward*, 1 Atk. 153. Yet where a creditor, who had the bankrupt in custody upon mesne process, petitioned to be admitted to prove, and an order was made accordingly, the bankrupt was holden to be entitled to his discharge instant upon the making of the order *Ex p. Irving*, Buck, 423. and lodging a detainer against a bankrupt in custody, and afterwards proving under the commission, will entitle the bankrupt to his discharge at the costs of the creditor. *Ex p. Cross*, 2 Glyn & J. 100. Even petitioning that the commission may be superseded, or if found valid that the party like, will be deemed to be with as to induce the court, under which from proceeding at law, *Ex p. Hurdenberg*, id. 204. and see *Dickson*, id. 93, or to make his custody before the petition *Ex p. Blyden*, 1 Glyn & J. 179. *Ex*

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Proving under a separate commission against one of two partners, or obligors, &c. does not prevent the creditor from suing the other; *Heath v. Hall*, 4 Taunt. 326. and see the stat. *supra*; but he will not be allowed to sue both, *Bradley v. Millar*, 1 Rose, 273, at least unless he give an indemnity to the bankrupt against the costs and other consequences of the action. *Ex p.*

460, 1 V. & B. 346. So, if a creditor have two debts distinct in their nature, or due in different times, he may prove one of them, this will not prevent him from proceeding at law against the bankrupt for the recovery of the other. *Steele v. Mader*, 1 B. & A. 121. *Harley v. Green*, A. 95. *Dally v. Walfarston*, 3 D. & R. 271. *Ex p. Atk. 109.* *Ex p. Matthews*, 3 Atk. 817; how-  
to add, that the courts of equity have decided  
*Ex p. Hardenberg*, 1 Rose, 204. *Ex p. Dickson*,  
*Ex p. Glover*, 1 Glyn & J. 270. So, it has been  
decided that if the holder of a bill of exchange prove upon the

estate of the acceptor, this does not preclude the drawer, who afterwards pays the bill, from suing the acceptor upon it; *Mead v. Bruham*, 3 M & S. 91; but the contrary to this was decided in *Ex p. Lobbon*, 17 Ves. 334; and in *Ex p. Taylor & al.* 1 Glyn & J. 399, it was holden that a person to whom a creditor assigns a debt, which he has proved under a commission against the debtor, cannot afterwards sue the bankrupt for it in an action at law. But it has been holden, that proving under a second commission, where the bankrupt has not paid 1*5*s. in the pound, does not prevent the creditor from proceeding against his future effects. *Ex p. Hughes*, 5 B. & A. 482. and *Ex p. Buckle & al.* 1 Glyn & J. 32. but see *Read v. Sowerby*, 3 M. & S. 78, *contra*. If a plaintiff, however, by proving under the commission, estop himself from proceeding against the bankrupt in an action already commenced, he cannot afterwards proceed against his bail. *Linging v. Comyn*, 2 Taunt. 246.

2. Another effect of proving is, that if the creditor have securities of the bankrupt which he has been obliged to give up, but the value of which he was not then probably aware of, he will not afterwards be allowed to retract his proof, in order to avail himself of his securities. *Ex p. Downes*, 1 Rose, 96, 18 Ves. 290. and see *Ex p. Solomon*, *ante*, p. 103.

3. But proving under a commission is no admission of its validity, and does not estop a creditor from afterwards impeaching it. *Stewart v. Richman*, 1 Esp. 108.

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#### 4. Reduction and Expunging of Proofs.

By stat. 6 Geo. 4. c. 16. § 60, whenever it shall appear to the assignees or to two or more creditors, who have each proved debts to the amount of twenty pounds or upwards, that any debt proved under the commission is not justly due either in whole or in part, such assignees or creditors may make representation thereof to the commissioners; and it shall be lawful for the said commissioners to summon before them and examine upon oath any person who shall have so proved as aforesaid, together with any person whose evidence may appear to the commissioners to be material, either in support of or in opposition to any such debt; and if the said commissioners, upon the evidence given on both sides, or (if the person who shall have so proved as aforesaid shall not attend to be examined, having been first duly summoned, or notice having been left at his last place of abode) upon the evidence adduced by such assignees or creditors as aforesaid, shall be of opinion that such debt is

not due either wholly or in part, the said commissioners shall be at liberty to expunge the same, either wholly or in part, from the proceedings: provided, that such assignees or creditors requiring such investigation, shall, before it is instituted, sign an undertaking, to be filed with the proceedings, to pay such costs as the commissioners shall adjudge to the creditor who has proved such debt as aforesaid, such costs to be recovered by petition: provided also, that such assignees or creditors may apply in the first instance by petition to the Lord Chancellor, or that either party may petition against the determination of the commissioners. *See ii. p. 107. post.*

Before this statute, the commissioners could not expunge a proof, without the consent of the parties; *Ex p. Graham*, 1 Ross, 456; the only remedy was by petition to the Lord Chancellor. And the commissioners have authority by this section, only where the objection is, that the whole or a part of the debt proved is not justly due from the bankrupt. But the debt may be due, and still the creditor may have no right to prove under the commission; as, for instance, where the creditor has taken the bankrupt in execution for it; after the issuing of the commission, (*see ante*, p. 101) or the like; in which cases the only remedy is by petition to the Lord Chancellor. So, if a creditor prove under the commission for a debt, and conceal the fact of his having securities of the bankrupt for it, this is a ground for applying to have the debt expunged; *Ex p. Hessack*, Buck, 390; but the application must be by petition. Fraud is a good ground for expunging a debt; *see Ex p. Cawthorne*, 2 Ross, 186, 19 Ves. 260; and the objection in such a case may be raised either before the commissioners, or by petition.

A creditor cannot petition to be at liberty to prove a greater sum than he attempted to prove before the commissioners; for if so, it would not be an appeal from their judgment. *Ex p. Fry*, 3 Mad. 132.

## SECTION VIII.

### *The Choice, &c. of Assignees.*

*Who may be chosen.]* An assignee of a bankrupt is a mere trustee for the creditors. It is not necessary that he himself should be a creditor, although he usually is so; and therefore it has been determined that an assignee, if he had not proved under the commission, may commence or prosecute any action or suit against the bankrupt, for the recovery of the debt due to him, his acceptance of the office of assignee not being deemed an election to come in under the commission. *Ex p. Ward*, 1

**Art. 153:** Where the act of bankruptcy on which the commission is founded, is the execution of a composition deed, a party to that deed, we have seen, cannot be the petitioning creditor; *ante*, p. 48; but he may be chosen assignee. *Jackson v. Irwin*, 2 Camp. 48. *Tappenden v. Burgess*, 4 East, 330. The bankrupt himself, however, cannot be assignee, whether he have obtained his certificate or not. *Ex p. Jackson*, 2 Rose, 221; 1 Coop. 286. Nor should any person be appointed, who has an interest adverse to the creditors. As the creditors, however, in their discretion, may choose whom they will, the legislature have thought it necessary to vest a controlling power in this respect in the Lord Chancellor, who, upon petition, may order the assignee, if ineligible, to be removed, and a new assignee appointed, as hereinafter mentioned; and in one case, where a person, who had an interest adverse to a large body of the creditors, was chosen assignee, he exercised this control, by appointing an agent or inspector to act as assignee on their behalf. *Ex p. Mills*, 2 Rose, 68; 3 V. and B. 130. and see *Ex p. De Tastet*, 1 Rose, 324, 1 V. and B. 280. *Ex p. Muntell*, 1 Rose, 325. *Ex p. Basarro*, 1 Rose, 266. *Ex p. Simpson*, 2 Rose, 337. Besides which, by stat. 6. Geo. 4. c. 16. § 61, the commissioners shall have power to reject any person, chosen by the creditors as assignee, who shall appear to them unfit to be such assignee; and upon such rejection another assignee or assignees shall be chosen. *Vide infra*. Usually two assignees, sometimes three or more, sometimes only one, are chosen, in proportion to the magnitude of the bankrupt's concerns.

**When, where, how and by whom chosen.]** By stat. 6. Geo. 4. c. 16. § 61, at the second meeting appointed by the commissioners as aforesaid (*see ante*, p. 70) or any adjournment thereof, assignees of the bankrupt's estate and effects shall be chosen; and all creditors who have proved debts under the commission, to the amount of ten pounds and upwards, shall be entitled to vote in such choice; and also any person authorized by letter of attorney from any such creditor or creditors, upon proof of the execution thereof, either by affidavit sworn before a master in chancery, ordinary or extraordinary, or by oath before the commissioners *viva voce*, and in case of creditors residing out of England, by oath before a magistrate where the party shall be residing, duly attested by a notary public, British minister or consul; and the choice shall be made by the major part in value of the creditors so entitled to vote: provided that the commissioners shall have power to reject any person so chosen who shall appear to them unfit to be such assignee as aforesaid, and

upon such rejection a new choice of another assignee or assignees shall be made as aforesaid.

The choice of assignees must be made at the second public meeting, or at an adjournment thereof; and the commissioners have the power to adjourn the choice of assignees, if they think proper, even although all the creditors who are present concur in the election. *Ex p. Garland*, 2 Rose, 361, 1 Mad. 318. But where they adjourned it, for the purpose of allowing time to investigate a proof tendered to them, and it appeared that the debt tendered, even if proved, was not of an amount sufficient to affect the choice of assignees already made, the court, upon petition, ordered the commissioners to execute the assignment to the assignees who had been chosen. *Ex p. Woolley*, 1 Glyn & J. 366. A major part of the commissioners must be present at the meeting at which the assignees are chosen; and therefore, where one commissioner alone was present at the meeting, the choice of assignees was set aside, even although the assignment was regularly executed by three commissioners. *Ex p. Moore & al.* 1 Glyn & J. 190.

The choice is to be made by the major part in value of the creditors who have proved debts under the commission to the amount of £10 or upwards, and who are either present at the meeting, or have deputed others by letters of attorney to vote for them. *Vide supra* and see the form of the letter of attorney, ii. p. 46, and of the affidavit of execution, ii. p. 47. Even the bankrupt himself may vote, if he have been allowed to prove a debt of £10 or upwards under the commission. *Re Conner*, Green, 260. See 1 Glyn & J. 151. And the number of creditors present is immaterial; even if one only be present, he may elect himself. *Cook*, 286. And this choice will be supported, although there be other creditors, unprepared at the moment to prove, but who, if they had proved, would have been able to procure a different person to be chosen; *Ex p. Butterfil*, 1 Rose, 192. *Ex p. Greignier*, 1 Atk. 91; unless indeed such choice were procured by fraud, or the like. See *Ex p. Surtees*, 12 Ves. 10. *Ex p. Durent*, Buck, 201. Where, however, by the mistake of the commissioners in rejecting a power of attorney, the principal creditor was prevented from voting, and the circumstances of the case were very special, upon petition a new choice was directed, the petitioner indemnifying the estate against the costs. *Ex p. Edwards*, Buck, 411. So where the great body of the creditors had been excluded from proving, but were afterwards, and after assignees were chosen, allowed to prove, the court directed a new choice of assignees. *Ex p. Hawkins*, Buck, 520.

Immediately upon the choice being made, the creditors high

a memorandum to that effect, (*see the form*, ii. p. 48), and an acceptance of the trust is signed at the foot of it by the assignees, or by some person or persons for them, and deputed for that purpose by letter of attorney. As soon as this is signed, the commissioners then execute the assignment, &c. as mentioned in the next section. Where the bankrupt had no property, and none of the creditors on that account would undertake the office of assignee, the court, upon this being certified by the commissioners, made an order that unless the petitioning creditor would accept the office of assignee, the commission should be superseded. 1 *Christian*, B. L. 252.

*In what cases removed.*] If any fraud be practised in procuring a particular person to be chosen assignee, the court, upon application, will order him to be removed. *Vide supra*, and see *Ex p. Shaw and al.* 1 *Glyn & J.* 127. And in such cases, although the objection be to one only of two or more assignees, yet the choice as to all must be set aside, and the creditors must proceed to a new choice of assignees. *Per Lord Eldon*, in *Ex p. Shaw & al.* 1 *Glyn & J.* 155. So, in one or two cases, under special circumstances, already noticed (*supra*), where the principal creditor, or the great body of the creditors were excluded from the choice of assignees, the court ordered the assignees to be removed. So, for misconduct in the execution of their trust, *Ex p. Halliday*, 7 *Vin. Abr.* 77, for converting to their own use any part of the bankrupt's property, *Ex p. Townshend*, 15 *Ves.* 400, for even purchasing any part of the bankrupt's property, or permitting a co-assignee to do so, *Ex p. Reynolds*, 5 *Ves.* 707, or the like, the court, upon petition of any of the creditors, will order assignees to be removed.

By *Ord. Loughb.* 8 *March*, 1794, in case an assignee shall become bankrupt, such bankrupt assignee shall be removed; and upon the death or bankruptcy of an assignee, upon application made to the major part of the commissioners named in the commission, signed by one or more of the creditors who have proved their debts and are entitled to vote for assignees, the commissioners shall cause due notice to be given in the *London Gazette*, and in such other of the public papers as they shall think fit, of the time and place when and where they shall proceed to the choice of a new assignee, in the room and stead of the deceased or bankrupt assignee. No application to the court is requisite in this case. *Ex p. Watts*, 1 *Rose*, 436. See *Ex p. Newton*, 1 *Atk.* 97. *Ex p. Stonehouse*, *Buck*, 531. So, insolvency or compounding with his creditors, is a sufficient cause for removing an assignee. See *Ex p. Surtees*, 12 *Ves.* 10. So, if an assignee reside permanently out of the jurisdiction of the court, as, for instance, in Scotland, the court, upon petition, of

any of the creditors, will remove him. *Ex p. Gray*, 13 *Ves.* 274.

So, an assignee may, under circumstances, be removed at his own request, upon petition; but in such a case he will have to pay all the costs attending it; he must consent to allow the new assignee to use his name in all actions in which it may be necessary to use it, upon an indemnity to be settled by the master; he must consent to pay the costs of all proceedings commenced by him, which the new assignee does not continue, unless the master should report that such costs were properly incurred; *Ex p. Thorley, Buck*, 231, 465, 3 *Mad.* 273; and he must (and indeed so must the assignees in all cases of removal) join with the commissioners in an assignment to the new assignee; *Ex p. Newton*, 1 *Ath.* 96. *Ex p. Halliday*, 7 *Vin. Abr.* 77, or if he abscond, or from other causes cannot execute the assignment, the court, in such case, will order the original assignment to be vacated. *Ex p. Bainbridge*, 6 *Ves.* 451. *Ex p. Cook*, 13 *Ves.* 271. *Ex p. Higgins*, 1 *Ball and Beatty*, 218. *Ex p. Bonbonus*, 3 *Mad.* 23. *Ex p. Corry, Buck*, 314. *Ex p. Bury, Ex p. Wilson, Cooke*, 308. But an assignee, removed for the convenience of the estate, as for infirmity, or the like, will not be obliged to pay costs, as if removed for his own convenience *Anon.* 5 *Mad.* 76.

And by stat. 6 Geo. 4. c. 16. § 66, authority is given to the Lord Chancellor to order the assignment or bargain and sale to be vacated, and others to make to other assignees to be chosen by the creditors, so however as not to affect the title of previous purchasers. See this section, *post*, p. 122.

*Appointment of Banker, &c.*] By stat. 6 Geo. 4. c. 16. § 102. at the meeting of creditors for the choice of assignees, the major part in value of such creditors there present may direct how, and with whom, and where, the money received from time to time out of the estate shall be paid in and remain until it be divided; and if such creditors shall not make such direction as aforesaid, the commissioners shall, immediately after such choice, and at the same meeting, make such direction; but no money shall be directed to be paid into the hands of any of the commissioners, or of the solicitor to the commission, or into any banking-house, or other house of trade, in which any such commissioner, assignee, or solicitor is interested. A memorandum of this direction is written at the foot of the memorandum of the choice of assignees, already mentioned (*ante*, p. 118), and is signed by the creditors. See the form, ii. p. 48. If no direction be given, the assignees shall pay all monies received by them into the Bank of England. *Ord. Loughb.* 8 March, 1794.



Also, by sect. 103, the commissioners may, as often as it shall appear to them expedient for the bankrupt's estate, direct any money, part of such estate, to be invested in the purchase of exchequer bills, for the benefit of the creditors, and may direct where and with whom such exchequer bills shall be kept, and cause such exchequer bills to be sold when it shall appear to them expedient, and may direct the proceeds thereof to be again laid out in the purchase of exchequer bills, or to be applied for the benefit of the creditors, subject to the control of the Lord Chancellor.

And by sect. 104, if any assignee shall retain in his hands, or employ for his own benefit, or knowingly permit any co-assignee so to retain or employ, any sum to the amount of one hundred pounds or upwards, part of the estate of the bankrupt, or shall neglect to invest any money in the purchase of exchequer bills, when so directed as aforesaid, every such assignee shall be liable to be charged in his accounts with such sum as shall be equal to interest at the rate of twenty *per cent.* on all such money, for the time during which he shall have so retained or employed the same, or permitted the same to be so retained or employed, as aforesaid, or during which he shall have so neglected to invest the same in the purchase of exchequer bills; and the commissioners are hereby required to charge every such assignee in his accounts accordingly. *See Ex p. Wilkinson, Buck, 197. Ex p. Goldsmith and al. 1 Glyn & J. 405.*

Where the estate, by order of the creditors, was deposited in the Bank of England, and two of the three assignees, having signed the drafts for a dividend, forwarded them to the third assignee for his signature, and such third assignee signs the draft, receives the money, and applies it to his own use and dies, his estate was held not to be liable to pay £20 *per cent.* interest on the funds so misapplied. *Ex p. Wackerbath, 2 Glyn & J. 151.*

Although the money be thus paid into a bank, or laid out in exchequer bills, yet it still remains subject to the control of the Lord Chancellor. Therefore, where money was lodged in the Bank of England in the names of five assignees, one of whom was dead, and another had absconded, and the bank refused to pay it to the three remaining assignees, without proof that the other two were dead, the Lord Chancellor, upon petition, ordered the money to be paid to the three assignees, intimating at the same time that he had no doubt but that he had authority to do so. *Ex p. Collins, 2 Cox, 427. Ex p. Hunter, 1 Merivale, 408.*

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## SECTION IX.

*The Assignment, and what passes under it.*

### 1. The Assignment.

Immediately after the creditors have chosen the assignees, the commissioners execute an assignment of all the bankrupt's chattel property, and a bargain and sale of his real property (if he have any) to them. See the form of the assignment, ii. p. 49, of the like, after a provisional assignment, ii. p. 56; of a bargain and sale, ii. p. 53; of the like, after a provisional bargain and sale, ii. p. 61. See *Primrose v. Bromley*, 1 Atk. 88. *Bennet v. Gandy*, Carth. 178. *Ex p. Robson*, Amb. 180. It is not necessary that copyhold estates should be included in the bargain and sale; but they may be conveyed directly from the commissioners to the purchaser. *Ex p. Harvey*, Buck, 493, 4 Mad. 403. And see *Drury v. Man*, 1 Atk. 95. And this has the effect of saving a double fine to the lord. *Vide post*, p. 126.

[To what time it relates.] The assignees have no title whatever in the bankrupt's property, real or personal, until the assignment or bargain and sale is actually executed. Then, as to personal property, their title relates back to the act of bankruptcy; but as to real property, although the assignees are entitled to, and may claim and recover, all lands of which the bankrupt was seized at the time of the act of bankruptcy or afterwards, yet they are not deemed to have the seisin of them, until actually conveyed to them by the bargain and sale. And, therefore, where an ejectment was brought for lands of a bankrupt, on the demise of the assignees, and the day of the demise was laid after the date of the commission, but before the execution of the bargain and sale, the plaintiff was nonsuit, and the court refused to set it aside. *Doe v. Mitchell and al.* 2 M. & S. 446. And see *Perry v. Bowes*, T. Jon. 196, 1 Vent. 360. *Elliot v. Danby*, 12 Mod. 3. *Lloyd v. Lander*, 5 Mad. 282.

Where a trader commits an act of bankruptcy by lying in prison, this relates, not to the twenty-first, but to the first day, of his imprisonment, so as to overreach all intermediate transactions, *ante*, p. 46; all the other acts of bankruptcy relate, of course, to the very day on which they have been committed. And in judging of the date of an act of bankruptcy, with refer-

ence to any transaction of the bankrupt, the courts will take notice of a fraction of a day. Therefore, where the sheriff seized the goods of a trader under an execution, and subsequently on the same day the trader rendered himself in discharge of his bail in another action, and committed an act of bankruptcy by lying in prison; in an action for the value of the goods, brought by the assignees against the sheriff, the court took notice of this fraction of the day, and held that as the sheriff had seized before the bankrupt had surrendered, the assignees were not entitled to recover. *Thomas v. Desanges*, 2 B. & A. 586. It may be necessary here to remark, that the act of bankruptcy to which the assignment has relation, as above stated, must be some act committed subsequently to the accruing of the petitioning creditor's debt. *Ante*, p. 54, 55, &c. *Ex p. Birkett*, 2 Rose, 71.

As the king is not bound by the bankrupt laws, this relation of the assignment has no effect on any process, &c. at his suit; he is bound by the assignment, only from the time of its being actually executed. *R. v. Arnold*, 7 Vin. Abr. 104. *R. v. Cotton*, 2 Ves. 295. *R. v. Pixley*, Bunb. 202. *Ex p. Russell*, 19 Ves. 165. *R. v. Bewdley*, Cook, 379. An extent operates from the time of its teste, or the date of the *fiat* for it; and if that be prior to the execution of the assignment, the crown shall have its execution of the property of the bankrupt; even where the extent was tested on the same day the assignment was executed, the court of exchequer held that the king's process should be preferred. *Park Rep.* 126. But if the assignment be executed prior to the teste of the extent or date of the *fiat*, then the assignees shall have the property of the bankrupt, notwithstanding the debt due to the crown. See *R. v. Mann*, 2 Str. 749. The land-tax money, in the hands of a collector, is a debt due to the king; and although the warrant of the commissioners of land tax be not equal to an extent, so as to bind the goods from the date, yet if a collector become bankrupt, and his goods be afterwards seized under a warrant from the commissioners, before the actual execution of the assignment, the king's debt must be satisfied. *Brassey v. Dawson*, 2 Str. 978. and see *R. v. Jones*, 8 Price, 108. So. a warrant of the commissioners of excise to seize the goods of a trader, for penalties incurred by him previously to his bankruptcy, cannot be executed on the goods in the hands of the assignees after an assignment. *Austin v. Whitehead*, 6 T. R. 436. See *Stracey v. Hulse*, Doug. 411.

*In what cases, and how vacated.*] By stat. 6 Geo. 4. c. 16. § 66. the Lord Chancellor may, upon petition, order any conveyance or assignment either of the real or personal estate of the

bankrupt, made either to assignees appointed by the commissioners or chosen by the creditors, and any enrolment thereof to be vacated, provided that no title of any purchaser under any conveyance prior to such order, be thereby affected, and that no estate previously barred be thereby revived; and the Lord Chancellor may order the commissioners to execute a new assignment or assignments of the debts and effects unreceived and not disposed of by the then assignee or assignees to any other person or persons to be chosen by the creditors as aforesaid, or to execute a new conveyance of the real estate unsold or not conveyed to such person or persons, and in such manner, as the Lord Chancellor shall direct; and if such new assignment shall be ordered, the debts and personal estate of the bankrupt shall be thereby vested in such new assignees, and it shall be lawful for them to sue for the same, and to discharge any action or suit, or to give any acquittance for such debts, as effectually as the former assignees might have done; and the commissioners shall, in the two London Gazettes next after the removal of such assignee or assignees and such new appointment as aforesaid, cause advertisements to be inserted, giving notice of such removal and appointment, and directing persons indebted to the bankrupt's estate not to pay any debt to the assignee or assignees so removed; and if such new conveyance as aforesaid shall be ordered as aforesaid, it shall be valid without any conveyance from any former assignee or assignees, or his or their heirs or assigns, provided that the order so made for vacating any bargain and sale be enrolled; and any bargain and sale to be executed in pursuance thereof shall be enrolled in the same court as the first bargain and sale of the same estate was enrolled.

Nearly the same authority was given to the Lord Chancellor by two of the repealed acts, namely, 5 Geo. 2. c. 30. § 31. and 3 Geo. 4. c. 81. §. 5. See *Ex p. Harris*, 3 *Mad.* 473. *Ex p. Cook*, *Buck*, 321. And he will exercise it in all those cases already mentioned, in which assignees may be removed (*see ante* p. 118,) and also in case of the death of assignees. See *Ex p. Corry Buck*, 314. In one case, where the estate was small, the court vacated the assignment and bargain and sale, without ordering a new choice of assignees. *Ex p. Kersley, Buck*, 477.

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## 2. *What property passes under the Assignment.*

The general rule is, that all property of the bankrupt, real and personal, in possession, remainder, reversion, or in action merely, to which he was entitled at the date of the act of bank-

ruptcy, or afterwards, is vested in his assignees by the assignment and bargain and sale ; and his acts thenceforth, with reference to this property, are considered, to all intents and purposes, as the acts of a stranger. To this however, some exceptions have been made by statute, which shall be noticed presently. Having laid down this general rule thus shortly, we shall now proceed to treat of the subject, more particularly under the following heads.

*Fee simple, Estate for life, &c.*] By stat. 6 Geo. 4. c. 16. § 64 the commissioners shall, by deed indented and enrolled in any of his Majesty's courts of record, convey to the said assignees, for the benefit of the creditors as aforesaid, all lands, tenements, and hereditaments\* (except copy of customary hold) in England, Scotland, Ireland, or in any other of the dominions, plantations, or colonies belonging to his Majesty, to which any bankrupt is entitled and all interest to which such bankrupt is entitled to in any of such lands, tenements, or hereditaments, and of which he might according to the laws of the several countries, dominions, plantations, or colonies, have disposed ; and all such lands, tenements, and hereditaments as he shall purchase, or shall descend, be devised, revert to, or come to such bankrupt, before he shall have obtained his certificate ; and all deeds, papers, and writings respecting the same ; and every such deed shall be valid against the bankrupt, and against all persons claiming under him : Provided that, where, according to the laws of any such plantation or colony, such deed would require registration, enrolment, or recording, the same shall be so registered, enrolled, or recorded, according to the laws of such plantation or colony ; and no such deed shall invalidate the title of any purchaser for valuable consideration prior to such registration, enrolment, or recording, without notice that the commission has issued. See *form of the deed*, ii. pp. 53. 61. and *of the enrolment*, ii. p. 66.

This of course includes, not only estates in possession, but also estates in remainder and reversion. Even a mere possibility of right will pass under the deed. As, for instance, where property is devised to a person for life, remainder to such of his

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\* Until lately, the freehold property of a trader at his decease was not liable, in the hands of his heir or devisee, for the payment of his simple contract debts, unless he had become bankrupt ; but by stat. 47 Geo. 3, sess. 4. c. 72. § 1, it is now made assets in equity, to be applied to the payment of all his debts, as well by simple contract as by specialty, the specialty creditors, however, to be preferred.

children as shall be living at the time of his death ; and one of the children in the life-time of the father becomes bankrupt and obtains his certificate, and then the father dies : the bankrupt's share of the property will have passed to his assignees under the assignment. *Higden v. Williamson*, 3 P. Wms. 132. But a possibility that lands will come to the bankrupt by descent, if they do not actually descend to him before he obtains his certificate, will not pass to the assignees. *Moth v. Frome*, Amb. 394. *Carleton v. Leighton*, 3 Merivale, App. 667.

It also includes incorporeal hereditaments. Thus, for instance, if a bankrupt be the patron of an advowson, it passes to the assignees under the deed of bargain and sale ; but if the church be void at the time the advowson is sold, the bankrupt, it seems, and not the vendor, shall present. *Ex p. Meymot*, 1 Atk. 196, 1 Burn, Ecc. L. 125. and see 6 Geo. 4. c. 16. § 77, post. So, the commissioners may sell any office of inheritance, &c., which the bankrupt lawfully might have sold ; *Ex p. Butler*, 1 Atk. 210, 215, Amb. 78. *Ex p. Joynes*, Cook, 316. *Ex p. Gilbee*, id. ; but if it concern the administration of justice, or be otherwise within stat. 5 & 6 Ed. 3. c. 16, they cannot ; *Bristow's case*, 1 Atk. 212. *Schellinger v. Blackerby*, 1 Ves. 347. *Ex p. Lyons*, Amb. 89 ; nor can the half-pay of an officer be sold. See *Flarty v. Odium*, 3 T. R. 681. *Lidderdale v. Duke of Montrose*, 4 T. R. 248. *Stone v. Lidderdale*, 2 Anst. 533. *Barwick v. Reade*, 1 H. Bl. 627. *Stewart v. Tucker*, 2 W. Bl. 1137. So annuities, the property of a bankrupt, pass under the assignment ; *Brandon v. Robinson*, 1 Rose, 197 ; and the same, as to heriots, reliefs, &c. Com. Dig. Bankrupt, D. 16, and all other incorporeal hereditaments which may legally be sold.

*Estate tail.*] By stat. 6 Geo. 4. c. 16. § 65, the commissioners shall by deed, indented and enrolled as aforesaid. (see sect. 64, *supra*,) make sale, for the benefit of the creditors as aforesaid, of any lands, tenements, and hereditaments, situate either in England or Ireland, whereof the bankrupt is seised of any estate tail in possession, reversion, or remainder, and whereof no reversion or remainder is in the crown, the gift or provision of the crown ; and every such deed shall be good against the said bankrupt and the issue of his body, and against all persons claiming under him after he became bankrupt, and all persons whom the said bankrupt by fine, common recovery, or any other means, might cut off or debar from any remainder, reversion, or other interest, in or out of any of the said lands, tenements, or hereditaments.

Where a joint commission issued against the tenant for life, and the tenant in tail in remainder of the same estate, it was

holden that the execution of the power of the commissioners operated separately on each estate, and therefore that under the bargain and sale of the commissioners the assignees took an estate for life, and a base fee in remainder determinable on the death of the tenant in tail and the failure of issue of his body. *Jervis & al. v. Tayleur*, 3 B. & A. 557. and see *Doe v. Clarke*, *infra*.

*Copyholds.*] By stat. 6 Geo. 4. c. 16. § 68, the commissioners shall have power, by deed indented and enrolled in any of his Majesty's courts of record, to make sale, for the benefit of the creditors, of any copyhold or customaryhold lands, or of any interest to which any bankrupt is entitled therein, and thereby to entitle or authorize any person or persons on their behalf to surrender the same for the purpose of any purchaser or purchasers being admitted thereto.

Where a testator devised a copyhold estate to his wife for life, remainder to his son and the heirs of his body; and there was no custom in the manor to entail copyholds; the mother died; the son had become bankrupt and died, before admittance and before any bargain and sale executed by the commissioners, leaving issue: the court held that the son took a fee simple conditional at common law, and that the commissioners might execute a valid conveyance of it after his death. *Doe v. Clark*. 5 B. & A. 458. See *Jervis v. Tayleur*, *supra*.

This conveyance is made by bargain and sale, directly from the commissioners to the vendee; *Ex p. Holland*, 4 Mad, 483. *Drury v. Mann*, 1 Atk. 96; which avoids the necessity of paying a double fine to the lord. And by stat. 6 Geo. 4. c. 16. § 69, every person, to whom any sale of copyhold or customary lands or tenements shall be made by the commissioners, shall, before he enter into or take any profit of the same, agree and compound with the lords of the manors of whom the same shall be holden, for fines, dues, and other services as theretofore have been usually paid for the same; and thereupon the said lords shall, at the next or any subsequent court to be holden for the said manors, grant unto such vendee, upon request, the said copy or customary lands or tenements, for such estate or interest as shall have been so sold to him as aforesaid, reserving the ancient rents, customs, and services, and shall admit him tenant of the same.

*Leaseholds.*] A term for years passes under the assignment; see 6 Geo. 4. c. 16. § 64, *supra*, and § 63, *post*; but the assignees may take possession or not, according as they consider the term valuable or otherwise. *Bourdillon v. Dalton*, 2 Esp. 233. *Tur-*

*ner v. Richardson*, 7 East, 339. *Copeland v. Stevens*, 1 B. & A. 593. See "Conditional Estates," post, p. 129. Formerly a bankrupt, possessed of a term for years at the time of his bankruptcy, whether his assignees took possession or not, was at all times, during the term liable to be sued by the lessor in covenant for nonpayment of rent, &c., *Auriol v. Mills*, 1 H. Bl. 433, 4 T. R. 94, though not in debt; 1 H. Bl. 437, n. 4 T. R. 91. and see 7 T. R. 27; and his certificate was no bar. But now, by stat. 6 Geo. 4. c. 16, § 75, any bankrupt entitled to any lease or agreement for a lease, if the assignees accept the same, shall not be liable to pay any rent accruing after the date of the commission, or be sued in respect of any subsequent nonobservance or nonperformance of the conditions, covenants, or agreements therein contained; and, if the assignees decline the same, shall not be liable as aforesaid, in case he deliver up such lease or agreement to the lessor or such person agreeing to grant a lease, within fourteen days after he shall have had notice that the assignees shall have declined as aforesaid; and if the assignees shall not (upon being thereto required) elect whether they will accept or decline such lease or agreement for a lease, the lessor or person so agreeing as aforesaid, or any person entitled under such lessor or person so agreeing, shall be entitled to apply by petition to the Lord Chancellor, who may order them so to elect and to deliver up such lease or agreement (in case they shall decline the same) and the possession of the premises, or may make such other order therein as he shall think fit. See *Doe v. Smith*, 5 Taunt. 795.

There was a similar clause contained in one of the repealed statutes, (49 Geo. 3. c. 121, § 19); and that was holden not to extend to a parol agreement for a lease. *Ex p. Sutton*, 2 Rose, 86. That act also was holden to be confined to cases between lessor and lessee, or their respective assignees, and not to extend to cases between a lessee and his assignee of a lease; *Taylor v. Young*, 3 B. & A. 521; and this act would probably meet with the same construction.

Where the assignees entered and took possession, they were considered as having elected to take the lease, and become chargeable with the covenants, although the bankrupt's effects were upon the premises, and the assignees delivered up the key immediately after the effects were sold. *Hanson v. Stevenson*, 1 B. & A. 303. So, where assignees intermeddle with and assume the management of the bankrupt's farm, it will be deemed an election to accept the term. *Thomas v. Pemberton*, 7 Taunt. 206. and see *Welch & al. v. Myers*, 4 Camp. 368. So, where the assignees of a bankrupt term or put up the lease for sale, and sold it, and received a deposit from the purchaser, it was holden that



they were liable to the landlord as assignees of the lease, unless they could shew that the contract had been rescinded. *Hastings & al. v. Wilson & al.*, *Holt*, 290. But merely putting up the term to auction, to ascertain if it were of value, without giving themselves out as the proprietors, but interfering no further, upon finding there were no bidders, *Turner v. Richardson*, 7 *East*, 335, or the merely not delivering up the key to the landlord, *Wheeler v. Bramah & al.* 3 *Camp.* 340, or the payment of rent by the assignees, made for the express purpose of avoiding a distress to which the goods of the bankrupt were liable, *id.*, or even their releasing an under tenant, *Hill v. Dobie*, 8 *Taunt.* 325, 2 *Moor*, 342, will not be deemed an election for the assignees to accept the term. Where the assignees thus refuse to accept a lease, it may be deemed a determination of the term; and therefore if the bankrupt lessee might, according to the terms of the lease, at the end or sooner determination of the term, take the offgoing crop, the assignees will be entitled to it on the bankruptcy, on payment of the rent due; *Ex p. Maundrell*, 2 *Mad.* 315, *Buck*, 83. *Ex p. Gough*, 1 *Rose*, 445, *Buck*, 85; or if the bankrupt lessee were bound to leave the straw, &c. upon the farm, so must the assignees. *Ex p. Whittingdon*, *Buck*, 87. On the other hand, if the assignees have taken possession, they cannot hold it for a while, and then insist on relinquishing it; *Broome v. Robinson*, 7 *East*, 339, *cit.*; but there is no objection in law to their assigning it to any person, however irresponsible, *Anslow v. Corry*, 2 *Mad.* 330. See *Wilkins v. Fry*, 2 *Rose*, 371, although done expressly for the purpose of relieving themselves of their own responsibility. See *Taylor v. Shaw*, 1 *B. & P.* 21. But where the landlord himself becomes assignee of his tenant, a bankrupt, he will not be allowed to determine the tenancy in this way, and relet the premises to advantage for himself, but will be deemed to have done so for the benefit of the creditors. *Ex p. Wright*, 2 *Rose*, 244.

The landlord in this case can only petition that the assignees may be ordered to elect to accept the lease, or to give it up together with the possession of the premises; and therefore, when the landlord petitioned for payment of rent due after the bankruptcy, and for compensation for straw, &c. taken off the farm, contrary to a covenant in the lease, the court held that it had no jurisdiction to entertain the application, and dismissed the petition, but without costs. *Ex p. Warwick*, *Buck*, 326. And in case of a petition to compel assignees to elect as to accepting or declining the lease, the court has no power to give the lessor costs either against the assignees or the estate. *Ex p. Bright*, 2 *Glyn & J.* 79.

What has here been said relates to the bankrupt and to the

assignees. But a surety, who has given a bond for the due payment of the rent and performance of the covenants, will still be liable, although his principal, the bankrupt, be relieved of his responsibility by the statute. *Inglis v. Macdougall*, 1 Moore, 166.

*Conditional estates.*] Estates upon condition expressed, are of two kinds: first, where the estate commences upon the performance of a certain condition; and secondly, where it is defeasible upon the performance of a condition. And the latter may be classed under two heads, namely, where the estate has been created by the bankrupt, and where it has been conveyed to him. In this order we shall now consider them.

1. As to the first, we have seen that estates given by deed or will to the bankrupt, but of which he is to become possessed upon the happening of a certain contingency, pass to the assignees under the assignment; *Higden v. Williamson*, ante, p. 125; and the same will be found to be the case generally of all estates created to commence upon the performance of a condition expressed.

2. Where an estate has passed from the bankrupt, defeasible upon the performance of a condition, such as that created by a mortgage, or by his lands being extended under a statute merchant, statute staple, or elegit, the assignees have, by virtue of the bargain and sale, what may be termed the equity of redemption, presently; and by stat. 6 Geo. 4. c. 16. § 70, if any bankrupt shall have granted, conveyed, assured, or pledged any real or personal estate, or deposited any deeds, such grant, conveyance, assurance, pledge, or deposit being upon condition or power of redemption at a future day, by payment of money or otherwise, the assignees may, before the time of the performance of such condition, make tender or payment of money, or other performance, according to such condition, as fully as the bankrupt might have done; and after such tender, payment, or performance, may sell and dispose of such real or personal estate for the benefit of the creditors as aforesaid. Formerly the Lord Chancellor felt great disinclination to give effect to equitable mortgages, as against the assignees of a bankrupt; see *Ex p. Haigh*, 11 Ves. 404; but they are expressly included in this section. Between a mortgage of land, and a mortgage or pledge of goods, this distinction must be observed, that the mortgagor of lands may retain the possession of them, without affecting the security; but a mortgage or pledge of goods will be deemed a nullity, as against assignees, if the goods have been allowed to remain in the possession of the mortgagor or party who pledged them. *Jones v. Gibbons*, 9 Ves. 407. And if the mortgage be of lands and goods, it will be deemed

valid as to the lands and things fixed to the freehold, but bad as to the moveable chattels. *Ryall v. Roll*, 1 *Atk.* 165, 1 *Ves.* 348. *Stephens v. Sole*, 1 *Ves.* 752. *Bourne v. Dodson*, 1 *Atk.* 154. and see *Bryson v. Wyllie*, *Cook*, 362. *Derby v. Smith*, 8 *T.R.* 82, 6 *Ves.* 488. So, where the proprietor of a newspaper assigned his interest in it to a creditor as security, but still continued to carry it on, and his name remained at the Stamp Office as the proprietor of it, it was holden that upon his becoming bankrupt, his interest in the paper vested in his assignees. *Longman v. Trip*, 2 *New R.* 67. However there are many cases in which, although the mortgagor of moveable chattels does not remain in possession of them, it may be impossible to give the actual manual occupation of them to the mortgagee: as for instance, in the case of a ship at sea, which however may be transferred in the manner pointed out by the statutes on the subject; in the case of goods in transit on board a ship at sea, in which case a transfer of the bill of lading will be deemed a legal transfer of the goods; see *Meyer v. Sharpe*, 5 *Taunt.* 74; of sugars in the West India Docks, in which case a transfer of the warrants will be deemed a legal transfer of the sugars; *Lucas v. Dorien*, 1 *Moor*, 29; and the like.

And in the cases of mortgages by a bankrupt, equity will supply a defect in the conveyance, as against the assignees, in the same manner as in other cases. See *Russell v. Russell*, 1 *Bro.* 269. Where a trader mortgaged copyhold lands, but it was neglected to present the surrender within the time limited by the custom, and the trader became bankrupt and died: the assignees were not permitted to take advantage of the defect. *Taylor v. Wheeler*, 2 *Vern.* 565. But where a tenant in tail mortgaged in fee and died, without suffering a recovery, the court held that the assignees, upon the death of the bankrupt, became entitled to the estate, clear of the mortgage; *Beck v. Welsh*, 1 *Wils.* 276; yet even in this case it would have been ruled otherwise, if the mortgage had contained a covenant for further assurance upon the part of the mortgagor. *Pye v. Daubuz*, 3 *Bro.* 395. *Edwards v. Applebee*, 2 *Bro.* 652, *cit.* So, equity has refused to make good the mortgage of a ship, which was defective, the regulations in the registry acts not having been complied with. *Ex p. Bulteel*, 2 *Cox*, 243.

The mortgage or other conveyance of conditional estate, to be valid, must have been executed so as to affect the estate before the bankruptcy. If a bankrupt, seised of lands in fee, owe a debt by statute, and the statute be not sued and executed previously to the bankruptcy, the estate passes to the assignees, clear of the debt. *Newland v. —*, 1 *P. Wms.* 92. So, where a merchant, before an act of bankruptcy, pledged goods at sea,

by delivering the bill of lading of them ; but his agents abroad having sold a part of them, and substituted other goods for them, the merchant did not deliver to the pawnee the bill of lading of these other goods until after his bankruptcy : it was holden that the assignees were entitled to the substituted goods. *Meyer v. Sharpe*, 5 Taunt. 74.

If the assignees file a bill to redeem, and there be two mortgages to the same party, one of which is a good security for the money, the other not, the assignees will not be allowed to redeem the one without the other. *Pope v. Onslow*, 2 Vern. 286. Where a mortgagee filed a bill against the assignees of the mortgagor, to foreclose, it was holden to be no objection that no bargain and sale had been executed to them. *Bainbridge v. Pinhorn*, Buck, 135.

Where the mortgagor in possession was by express contract tenant at will to the mortgagee, it was holden that the mortgagee was not entitled to the crops upon the mortgaged premises, at the time of the bankruptcy of the mortgagor, or at the time of the order for sale by the commissioners. *Ex p. Temple*, 1 Glyn & J. 216.

3. Where an estate is granted to a trader, defeasible upon the performance of a condition or the happening of a contingency, the estate vests in his assignees, upon his bankruptcy, until the condition is performed or the contingency has happened. If the bankrupt be a mortgagee, the estate passes to the assignees, subject to the mortgagor's equity of redemption. If a bankrupt be a pawnee, the thing pledged passes to the assignees, subject to the pawnor's right to redeem. But if a lease made to a trader contain a proviso, making it void if he should become bankrupt, the term will not pass to the assignees, but will determine altogether upon the lessee's bankruptcy. *Roe v. Galliers*, 2 T. R. 133. So, if land be let to a trader for 21 years, if the tenant shall so long continue to inhabit and dwell in the farm house, and actually occupy the land, and not let, set, assign over, or otherwise depart with the lease : the term will not pass to the assignees, but will become forfeited immediately upon the tenant's ceasing to reside, &c. *Doe v. Clarke*, 8 East, 185. and see *Doe v. Hawke*, 2 East, 481. But if a lease merely contain the usual covenant, not to assign, &c. without consent of the lessor, it will pass to the assignees ; *Seers v. Hind*, 1 Ves. 294. *Goreing v. Warner*, 2 Eq. Ca. Abr. 100. *Philpot v. Hoare*, Amb. 480, and see *Doe v. Smith*, 1 Marsh, 359. *Doe v. Carter*, 8 T. R. 57, 300. *Lloyd v. Crispe*, 5 Taunt. 249, per Mansfield, C. J. ; for to prevent its passing to the assignees upon the bankruptcy of the tenant, there must be an express proviso in the lease to that effect. *Doe v. Bevan*, 3 M. & S. 353. If an

annuity be given to a trader for life, but limited over, or to cease altogether, in case of his bankruptcy, it will not pass to his assignees. And even where a testator made a bequest to trustees in trust to pay a trader an annuity during his life, provided that if the trader should, by any ways or means whatever, sell, dispose of, or incumber the right, benefit, or advantage he might have for life, then his interest to cease, and the trustees to apply the same for the benefit of his children: it was holden that on the bankruptcy of the trader his interest ceased, and his children became entitled. *Cooper v. Wyatt & al.*, 5 *Mad.* 482. So, where an annuity was given by will to a trader for life, payable to him only, upon his own receipt, and no other, and to cease immediately upon alienation: it was holden that it ceased upon his bankruptcy and the assignment of his effects. *Dommett v. Bedford*, 3 *Ves.* 149, 6 *T. R.* 684. See *Brandon v. Robinson*. 1 *Rose*, 197, *semb. cont.* But where standing timber was sold to a trader, with a proviso that in case of bankruptcy the vendor might retake it, it was holden that this proviso was void as against the assignees, if the trader at the time of his bankruptcy had the disposition of the timber. *Holroyd v. Gwynne*, 2 *Taunt.* 176.

*Powers.*] By stat. 6. Geo. 4. c. 16. § 77, all powers vested in any bankrupt which he might legally execute for his own benefit (except the right of nomination to any vacant ecclesiastical benefice (may be executed by the assignees for the benefit of the creditors, in such manner as the bankrupt might have executed the same. See *Doe v. Britain*, 2 *B. & A.* 93.

*Personal property,*] By stat. 6 Geo. 4. c. 16. § 63. the commissioners shall assign to the assignees, for the benefit of the creditors of the bankrupt, all the present and future personal estate of such bankrupt, wheresoever the same may be found or known.

If the bankrupt be a part owner of a ship, and be registered as such (see *Taylor v. Kinloch*, 1 *Stark.* 177. *Ex p. Howton*, 1 *Rose*, 177, 17 *Ves.* 251. *Ex p. Yallop*, 15 *Ves.* 60. *Battersby v. Smith*, 3 *Mad.* 110. *Ex p. Jones*, 4 *M. & S.* 450), his share in it passes to his assignees, without being chargeable for any disbursements, &c. by the other part owners. *Ex p. Harrison*, 2 *Rose*, 76.

By a private act of parliament a privilege of the sole making of a newly invented machine is vested in certain persons with a proviso that it shall be forfeited in case it shall become "vested, in or in trust for more than five persons or their representatives, otherwise than by devise or succession:"—held that if one of the persons become bankrupt, the right passes to his

assignees, and that though there are more than five creditors, yet the assignees do not hold it in trust for, "more than five persons otherwise than by devise or succession,"—within the meaning of the act. *Bloxam v. Elsee*, 1. Car. & P. 558.

Although the bankrupt's wearing apparel, in strictness, belongs to his assignees, as much as his other property, yet (by stat. 6 Geo. 4. c. 16. § 112, *post*, (he is allowed to retain all the necessary wearing apparel of himself, his wife and family. And the assignees shall not detain any part of it from him, on the ground of its being unnecessary; the bankrupt, upon his last examination, must determine that at his peril. *Exp. Ross*, 1 Rose, 33, 17 Ves. 374.

But property obtained by a trader by fraud, will not pass to his assignees upon his bankruptcy, but will still remain the property of the party defrauded. Where a trader, by false pretences, obtained a bill of exchange from J. S., and his assignees upon his bankruptcy received the amount, it was holden that this was to be deemed money had and received by the assignees to J. S.'s use. *Harrison v. Walker & al. Peake*, 111. See *Kieran v. Johnson & al.* 1 Stark, 109. *Willis v. Freeman*, 12 East, 656. So, where a trader obtained several bills of exchange from J. S., under a fraudulent representation that a security he had given him (which was in fact void) was an ample security; on the next day the trader, having resolved to stop payment, informed J. S. that he repented of what he had done, and had sent express to stop the bills, and that he would return them; in three days afterwards he committed an act of bankruptcy, and afterwards returned to J. S. all the bills, but one which had been discounted, and he returned him a portion of the bank notes received upon the discount of that one: the assignees having brought trover to recover the amount of the bills and bank notes, the court held, that having been obtained by the bankrupt from J. S. by a criminal fraud, they did not vest in the assignees, and that J. S. had therefore a right to retain them. *Gladstone v. Hadwen*. 1 M. and S. 517. But if a merchant deliver goods to a trader upon a contract of sale, although the goods were obtained by the latter with intent to defraud the merchant, yet the property is changed by the delivery, and the merchant cannot even take back the goods after an act of bankruptcy by the trader. *Millward v. Forbes*, 4 Esp. 171. So, where a trader bought some tobacco of a merchant, to be paid for in ready money; and on the same day absconded, desiring his servants to receive the tobacco; the merchant's servant afterwards brought the tobacco to the trader's house, without demanding the money: it was holden that the bankruptcy of the trader between the sale and delivery, did not avoid the sale; and

therefore that the merchant could not recover the tobacco in an action of trover against the assignees. *Haswell v. Hunt*, 5. T. R. 231, n.

*Debts and other choses in action.*] By stat. 6 Geo. 4. c. 16. § 63, the commissioners shall assign to the assignees, for the benefit of the creditors of the bankrupt, "all debts due or to be due to the bankrupt wheresover the same may be found or known; and such assignment shall vest the property, right and interest in such debts, in such assignees, as fully as if the assurance whereby they are secured had been made to such assignees; and after such assignment, neither the bankrupt nor any person claiming through or under him shall have power to recover the same, nor to take any release or discharge thereof, neither shall the same be attached as the debt of the bankrupt by any person according to the custom of the city of London or otherwise, but such assignees shall have like remedy to recover the same in their own names as the bankrupt himself might have had if he had not been adjudged bankrupt."

Where a trader covenanted to take A. and B. into partnership for eighteen years, and they agreed to pay him £3,500 by instalments; after the first, and before the two last instalments, the trader became bankrupt: it was holden that his assignees were entitled to the instalments unpaid at the time of the bankruptcy. *Ackhurst v. Jackson*, 1 Swanst. 85.

So, bills of exchange or promissory notes, in the hands of the bankrupt, pass to his assignees. But accommodation bills in the hands of the party for whose accommodation they were accepted or drawn, will not pass; and therefore it has been holden that a trader may indorse and pay away such a bill, for value after an act of bankruptcy. *Wallace v. Hardacre*, 1 Camp. 46. Where a trader after an act of bankruptcy, drew a bill upon his banker for a certain sum, for a part of which the banker held effects in his hands, and as to the residue the bill was accepted on the score of accommodation; the trader passed the bill to J. S. for value, and then a commission of bankruptcy was sued out against him: it was holden, in an action on the bill by J. S. against the banker, that he could recover only for so much of the bill as had been accepted for the accommodation of the trader; for the residue, namely the amount of the effects in his hands, and for that amount only, the banker was liable, in another form of action, to the bankrupt's assignees. *Willis v. Freeman*, 12 East 656.

If there be mutual accounts between the bankrupt and his debtor, the balance alone vests in the assignees, and is recoverable by them. *See ante*, p. 91. Where the time of the bankruptcy

A. was a creditor of the bankrupts for £1500, on a cash balance, and the bankrupts had in their hands two bills not then due for £1338 7s. 9d. drawn by A. and accepted by a third person for A.'s accommodation, and which A. had discounted with the bankrupts ; on petition of A. and the acceptor, the bills were ordered to be delivered up to A in part discharge of the cash balance, with liberty to prove for the residue. *Ex p. Harrison*, 2 Glyn & J. 93.

Where an agent accepted bills of his principal to the amount of funds belonging to the principal then in the hands of the agent, and the bills were negotiated to creditors who without the knowledge of the principal, accepted from the agent a composition of 10s. in the pound in payment of the bills, and the principal became bankrupt, held that the agent could retain as against the assignees out of the funds in his possession the full amount of the bills. *Stonehouse v. Read*, 5 Dow. & R. 603. 3 B. & C. 669. So, if the statute of limitations is pleadable against a bankrupt, his assignees are also barred by it ; and the time is to be computed from the date of the original cause of action, and not from the date of the commissioner's assignment. *Gray v. Mendez*, 1 Str. 555. *South Sea Company v. Wymondsell*, 3 P. Wms. 143. *Ashbrook v. Manby*, Comb. 70.

So, debts due to another, and assigned by him to the bankrupt, will pass to the assignees. Also, a legacy left to the bankrupt, at any time before the allowance of the certificate, will pass. *Tudway v. Bourn*, 2 Bur. 716. *Toulson v. Grout*, 2 Vern. 432. *Ex p. Ansell*, 19 Ves. 208. See *Ranking v. Barnard*, 5 Mad. 32. So, a policy of insurance, effected by a trader on his own life, passes to his assignees if he become bankrupt ; unless they expressly renounce their claim to it ; *Schondles & al. v. Wace*, 1 Camp. 487 ; and if, instead of delivering it up, he assign it to J. S., and die, and J. S. receive the amount of the policy, the assignees can recover the amount from J. S. in an action for money had and received. *Id.* But where a trader, after an act of bankruptcy, indorsed to a creditor certain bills of lading as a security, and the creditor insured the goods in his own name ; afterwards, the goods being lost, the creditor brought an action on the policy, averring the interest in the assignees of the bankrupt, and recovered : it was holden that the assignees were not entitled to the money thus recovered by the creditor. *Grant v. Hill*, 4 Taunt. 380. and see *Wills v. Wells*, 8 Taunt. 264, 2 Moor, 247, and post. So, for money lost by the bankrupt at play, his assignees may maintain an action under stat. 9 Anne, c. 14 ; for by that act, the money won is to be deemed money had and received to the loser's use. *Brandon v. Pate*, 2 H. Bl. 308. *Brandon v. Sands*, 2 Ves. 514. *Carter v. Abbott*, 2 D. & R. 575.



1 B. & C. 444. Even a right to bring a real action, passes to the assignees ; *Smith v. Coffin*, 2 H. Bl. 451 ; so will a right of action for a compensation under a dock act pass. 17 Ves. 343. But a right of action for a tort, as for slander, see *Benson v. Flower*, W. Jon. 215, or for a trespass *quare clausum fregit*, see *Clark v. Calvert*, 3 Moore, 96, does not pass to the assignees.

So the assignees shall have the benefit of all contracts made with the bankrupt, particularly if made for a valuable consideration executed ; as for instance, in the case of a policy of insurance, or the like, as already mentioned, *supra*. Where by a covenant in a charter party, the freighter was to pay freight to the owner ; and whilst the ship was at sea, the owner sold her, and then became bankrupt : it was holden that his assignees, and not the vendee of the ship, had the right to the freight and demurrage. *Splidt v. Bowles*, 10 East, 279. But where the consideration is good merely, and not valuable, or where there has been no consideration, or the consideration has failed, there no benefit in the contract passes to the assignees, or at least a court of equity will not interfere to enforce the performance of it. Therefore, where a father, from natural love and affection, covenanted to pay his son £15 a year, the assignees of the son could not enforce a specific performance of it. *Moyses v. Little*, 2 Vern. 194. So, a covenant to renew, will not in general be enforced in equity. See *Drake v. the Mayor of Exeter*, 1 Ch. Ca. 71, *Nelson*, R. 102, 2 Freem. 183, 2 Vern. 194, 1 Ep. Ca. Ab. 53, pl. 1. *Brook v Hewitt*, 3 Ves 253. *Willingham v. Joyce*, 3 Ves. 168. *Buckland v. Hall*, 8 Ves. 92. *Vandenanker v. Desborough*, 2 Vern. 96. Nor will equity enforce, for the benefit of creditors, an agreement for a lease, entered into with a view to the personal accomodation of the bankrupt. *Flood v. Finlay*, 2 Ball & Beatty, 9. But if the bankrupt have entered into an agreement for the purchase of land, if the contract be beneficial, the assignees may enforce it, and pay the purchase money, and then dispose of it for the benefit of the creditors. And by stat. 6 Geo. 4. c. 16. § 76, if any bankrupt shall have entered into any agreement for the purchase of any estate or interest in land, the vendor thereof, or any person claiming under him, if the assignees of such bankrupt shall not (upon being thereto required) elect whether they will abide by and excute such agreement, or abandon the same, shall be entitled to apply by petition to the Lord Chancellor, who may thereupon order them to deliver up the said agreement, and the possession of the premises, to the vendor or person claiming under him, or may make such other order therein as he shall think fit. See *Bowles v. Rogers*, and *Ex. p. Gyde*, *ante*, p. 102.

And the assignees, on the other hand, are bound by the agreements of the bankrupt made before his bankruptcy, where such agreements are set up as a defence to any proceedings upon the part of the assignees. Where J. S. became bound as a surety for a trader, and in order to indemnify him it was agreed that J. S. should retain any sums that might become due from him to the trader, in the course of their dealings, to the amount of the bond ; the trader sold goods to J. S. to a less amount than the bond, and afterwards became bankrupt : it was holden that the assignees could not recover in an action against J. S. for the amount of the goods, nothing being due to the bankrupt's estate on the original contract. *Dobson. v. Lockhart*, 5 T. R. 133.

*Property of others, in the bankrupt's possession, order, or disposition.*] By stat. 6 Geo. 4. c. 16. § 72, if any bankrupt, at the time he becomes bankrupt, shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition, any goods or chattels, whereof he was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition as owner, the commissioners shall have power to sell and dispose of the same for the benefit of the creditors under the commission : Provided, that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt or debts, either by way of mortgage or assignment, duly registered according to the provisions of an act of parliament made in the fourth year of his present majesty, intituled, An act for the registering of vessels.

This is the same as a section in one of the repealed acts (21 Ja. 1. c. 19. § 11), except that here the words are “possession, order, or disposition,” and in the statute of James they were “possession, order, and disposition :” here the words are, “whereof he was reputed owner, or whereof he had taken upon him the sale,” &c. ; in the statute of James they were, “whereof they shall be reputed owners, and take upon them the sale,” &c. The statute of James, also, did not contain the above proviso as to ships. Having noticed these differences between the two sections, we shall now notice the cases which have been decided upon the subject, all of which have of course been decided upon the above section of the statute of James.

To bring a case within the meaning of this section,

1. The property must consist of goods and chattels : therefore the possession of lands or things fixed to the freehold are not within the meaning of the statute ; *Ryal v. Roll*, 1 Ves. 248, 1 Atk. 165, 1 Wils. 260. *Horn v. Baker*, 9 East, 215, 237 ; and

even shares in the Vauxhall Bridge Company, who are seised of real estate, have been holden not to be within the statute. *Ex p. Vauxhall Bridge Company*, 1 Glyn & J. 101. But government stock is within it; *Brown v. Bellaris*, 5 Mad. 53; so are all choses in action; *Ryal v. Roll*, *supra*; such as bonds, *Ryal v. Roll*, *supra*, bills of exchange, *Hornblower v. Proud*, 2 B. & A. 327, debts, *Ryal v. Roll*, *supra*. *Ex p. Burton*, 1 Glyn & J. 207. *Ex p. Usborn*, *id.* 358, and the like. And here it may be necessary to remark, that in order to perfect the assignment of a debt, so as to vest in the party that which is equivalent to possession in other things, notice of the transfer must have been given to the debtor; *Ex p. Burton*, *supra*. *Ex p. Usborn*, *supra*. *Ryal v. Roll*, *supra*; bills of exchange are transferred by indorsement and delivery; but bonds must not only be delivered to the party, but notice must also be given to the obligor. *Ryal v. Roll*, *supra*. *Ex p. Monro*, *Buck*, 300.

2. The bankrupt must have had them in his possession, order, or disposition. Goods in a bonded warehouse belonging to a trader, were sold by him, and he received payment; he then became bankrupt; and although the buyer's initials had been marked upon them, yet it was holden that the goods passed to his assignees, as remaining in his possession, order, and disposition. *Knowles v. Horsefall*, 5 B. & A. 134. So if a trader sell goods of his lying at a wharf, and the buyer neglect to have them transferred into his name in the wharfinger's books, they will pass to the trader's assignees upon his bankruptcy, under this statute. See *Jones v. Dwyer*, 15 East, 21. But where the directors of a chartered company assigned their salaries and shares to the company, to secure debts due from them on their private accounts, and empowered the company to direct the treasurer to retain their salaries and dividends, and sell their shares, for payment of their debts, and one of the directors became bankrupt, before a sale actually took place, and his shares which remained in his name passed to his assignees, as being in his order and disposition, though the company could set-off against the bankrupt's debt the dividend and salary due to him at his bankruptcy. *Nelson v. The London Assurance Company*, 2 S. & S. 292. But where a trader, having sugars in the West India Docks in his own name, assigned them before his bankruptcy to another, by delivering to him the warrants of the West India Dock Company, this was holden to be a complete transfer of the sugars, and that they were no longer in his possession, order, and disposition, so as to vest them in his assignees upon his bankruptcy. *Lucas v. Dorien*, 1 Moor, 29. And where the bankrupt sold goods in the East India Company's warehouses, but being allowed to retain possession of the dividend warrants pledged such warrants

with another person, for an advance of money, and then became bankrupt: held that the goods were not in the order or disposition of the bankrupt, so as to give any title to the assignees, as against the party having purchased of the bankrupt. *Greening v. Clarke*, 6 Dow & R. 375, 4 B. & C. 316. So, where a trader having contracted with a canal company to build locks and bridges on the canal, purchased timber and other materials for the purpose, which were laid on the company's premises on the banks of the canal; on the company's advancing money to him, they took a bill of sale of these goods, and a symbolical delivery of them by a halfpenny: upon his becoming bankrupt afterwards it was holden that he did not retain such a possession of them as would enable the assignees to take them under this statute, for the best delivery was made that the nature of the case would admit of, the goods being before on the company's premises. *Manton v. Moor*, 7 T. R. 67. So, if a trader sell a cargo of goods at sea, a delivery of the bill of lading will be deemed a sufficient transfer, being the only delivery the nature of the case will admit of. *Brown v. Heathcote*, 1 Atk. 160. And see *Lempriere v. Pasley*, 2 T. R. 485. So, of a ship at sea, if the vendor make the best transfer he can under the circumstances of the case, if he deliver the grand bill of sale, *Atkinson v. Maling*, 2 T. R. 462, and (if the vendor be resident in the port in which the ship is registered) a copy of the bill of sale be delivered to the proper officer of the customs at that port, *Richardson v. Campbell*, 5 B. & A. 196, this will vest the property in the vendee, liable to be divested if he do not take possession of the ship upon his first arrival in England, *Mair v. Glennie*, 4 M. & S. 248. *Philpot v. Williams*, 2 Eden, 231. *Ex p. Batson, Cook*, 355, unless the transfer be of a share only in the ship, *Gillespie v. Coutts*, Amb. 652. *Ex p. Stadgroom*, 1 Ves. 163, 1 Cox, 234.) and have the indorsement made on the certificate of registry, &c. as required by the registry acts. See *Dixon v. Ewart*, 3 Merivale, 322. *Ex p. Matthews*, 2 Ves. Sen. 272. *Moss v. Charnock*, 2 East, 399.

If the sheriff under a writ of *fieri facias* do not take actual and adverse possession of a trader's goods, or if he allow the trader afterwards to deal with them as his own, up to the time of the bankruptcy, the goods will pass to the trader's assignees, notwithstanding the execution. Thus where the sheriff made out his warrant to the trader's shopman and another, who took possession, and carried on the business as usual, but without the interference of the trader, and the trader on the next day committed an act of bankruptcy: it was holden that the possession of the servant could not be deemed adverse to the master, and that the goods, thus remaining in the possession, order, and dis-

position of the bankrupt, passed to his assignees. *Jackson v. Irvine*, 2 Camp. 48. So, where a plaintiff levied execution on the goods of a trader, but desired the officer to leave a man in possession with the warrant, and not to sell, the trader was allowed to carry on his trade as usual, and in five months afterwards became bankrupt: it was holden that, notwithstanding the execution and possession of the officer, the goods passed to the trader's assignees. *Toussaint v. Hartop*, 1 Holt, 335.

The goods of a partnership, in the possession of one of the partners, who alone conducts the business, will not be deemed to be in his sole possession, order, or disposition, within the meaning of this act, so as to pass the whole property in them to his assignees upon his bankruptcy, even although the others be secret partners. *Caldwell v. Gregory*, 1 Prics, 119. See *Ex p. Barron*, 2 Rose, 252. *Ex p. Dyster*, Id. 256. *Ex p. Wilson, Buck*, 48. *Ex p. Flyn*, 1 Atk. 185. But if, after the dissolution of a partnership, the partners retiring allow the partner who continues the trade, to remain in the possession, order, or disposition of the partnership effects, debts, or other property, until he become bankrupt, they will pass to his assignees. *Re Gilpin*, 3 D. & R. 636, 2 B. & C. 389. Where a trader transferred stock into the joint names of himself and his landlord, as a security for his rent, and afterwards lodged his lease with his bankers as a security for advances, with a written memorandum, stating that he also assigned to them the stock, and should formally assign that and the lease whenever afterwards required: upon the trader becoming bankrupt afterwards, before any further transfer was made, it was holden that this stock did not pass to his assignees under this act; for he had but an equitable interest, and no power to make an actual transfer. *Ex p. Kensington*, 2 V. & B. 79.

3. They must have been in his possession, order, or disposition, at the time he became bankrupt, *see ante*, p. 137, and *see Gordon v. the E. I. Company*, 7 T. R. 228, and he becomes bankrupt on committing an act of bankruptcy, which is followed by a commission. *Lyon v. Waldon*, 2 Bing. 334. Therefore where a man purchased goods of a trader at a wharf, and allowed them to remain there some time in the trader's name, but had them transferred into his own name in the wharfinger's books the day before the trader committed an act of bankruptcy: it was holden that they did not pass to the trader's assignees, for the statute transfers only such goods as are in the bankrupt's possession, &c. with the consent of the owner, at the time of the bankruptcy. *Jones v. Dwyer*, 15 East, 21. *Arbouin v. Williams*, 1 Ryan & M. 72. See *Darby & al. v. Smith*, 8 T. R. 82. *Robinson v. Mac Donnell*, 2 B. & A. 134.

They must have been in his possession, &c. by the consent and permission of the true owner: therefore where stock, standing in the name of the Accountant-General, was mortgaged to secure a debt, and the Accountant-General afterwards transferred it into the name of the mortgagor, without the privity or consent of the mortgagee; it was holden that this stock did not vest in the assignees of the mortgagor upon his bankruptcy; for he was not in the possession, &c. of it, with the consent of the true owner. *Ex p. Richardson, Buck*, 480. But where a trustee for infants, sold the lease of a brewhouse and the plant, and let the purchaser into possession before payment: it was holden that the purchaser was in possession, with the consent of the true owner, within the meaning of this act; for by the term "true owner," must be intended the person who has the legal right to the possession, and the power of dealing with the property. *Ex p. Dale, Buck*, 365. So a mortgagee has been holden to be "the true owner," within the meaning of the statute. *See Ryal v. Roll, and the other cases, infra.*

They must have been in his possession, &c. as the reputed owner, or he must have taken upon him the sale, alteration or disposition of them as owner. Therefore, if a trader mortgage or pledge his goods, but be allowed to retain the possession of them until his bankruptcy, they will pass to his assignees under this act. *Stephens v. Sole*, 1 *Ves.* 752, 1 *Atk.* 170, *cit.* *Ryal v. Rolle*, 1 *Ves. sen.* 248, 1 *Atk.* 165, 1 *Wils.* 160. Even where a trader, who was the printer and publisher of a newspaper, assigning his interest in it to a creditor, but, by agreement between them, continued to print and publish as before, and no affidavit of any change of interest was delivered at the stamp office: it was holden that the interest in the paper passed to the assignees of the trader upon his bankruptcy. *Longman v. Tripp*, 2 *New R.* 67. And the same was formerly the case as to ships; if the owner of a ship mortgaged it to another, but continued to freight it, or act otherwise as the owner of it, it would pass to his assignees upon his bankruptcy, even although it were registered in the name of the mortgagee; *Hay v. Fairbairn*, 2 *B. & A.* 193. *Robinson v. Macdonnell*, 5 *M. & S.* 228. *Robinson v. M'Donnell*, 2 *B. & A.* 134. *Monkhouse v. Hay*, 2 *B. & B.* 114, 4 *Moor*, 549, 8 *Price*, 256; and the like, where he was a part owner only, *Hall v. Gurney, Cook*, 353, or the sole owner, but assigned only a share in it. *Kirkley & al. v. Hodgson*, 2 *D. & R.* 848. But the law in this respect is altered by the above section of the new act; and you may now with safety take a mortgage of a ship, and allow the mortgagor to retain the possession and management of it, without risk of its passing to his

assignees if he should become bankrupt, provided it be duly registered according to the provisions of stat. 4 Geo. 4 c. 41.

The law, however, remains still the same, where the absolute owner of a ship allows another person to have the possession, order, or disposition of it. Therefore, where ships, registered in the name of one partner only, were in the order and disposition of the partnership at the time of their bankruptcy, they were holden to pass under the assignment of the joint estate. *Ex p. Burn*, 1 Jac. & W. 378. Where goods bought and paid for are allowed to remain with the vendor until his bankruptcy, undistinguished from the remainder of his stock, they will pass to his assignees. Therefore where a person purchased hops of a hop merchant, and allowed them to remain in his warehouse for re-sale, upon rent, undistinguished from his stock: although this was proved to be the constant custom of the trade, yet the hops were holden to pass to the merchant's assignees upon his bankruptcy, as being in his possession, order, and disposition. *Thacktwate v. Cock*, 3 Taunt. 487. and see *White v. Wilks*, 5 Taunt. 176. Where a spirit merchant sold to a wine merchant 52 casks of brandy, all of which were bonded in the vendor's name, some of them in the vendor's warehouse, and some in that of a warehouse-keeper, and it was agreed that they should remain where they were until the vendee could conveniently remove them; and upon the sale the vendee marked the casks with the letter K. in chalk; no notice of the sale was given to the warehouseman, but it was notorious to all persons in the wine trade at the place that the brandy had been sold: the vendor becoming bankrupt, whilst a part of the brandy thus remained in the warehouses, it was holden to pass to his assignees, as being in his possession, order, and disposition. *Knowles v. Horsfall*, 5 B. & A. 134. But where a gentleman purchased a pipe of wine of a wine merchant, and had it bottled, and each bottle sealed with his own seal, but for his convenience it was deposited in the merchant's cellar, in a particular bin by itself: this was holden not to pass to the assignees on the merchant's bankruptcy. *Ex p. Murrable*, 1 Glyn & J. 402. So where a shipbuilder was building a ship for a merchant, and having nearly finished it, it was measured with his privity, and he gave a certificate of build, for the purpose of having it registered by the merchant, and it was accordingly registered in the merchant's name; the ship was to be paid for by four instalments, three of which were to be paid, (and were paid) during the building, the fourth upon its completion; but the builder became bankrupt before its completion, and the merchant took possession of it as it was, together with a rudder and some cordage which the builder had bought for it: in an action of

trover for it by the builder's assignees against the merchant, it was holden that the giving the certificate of build was a transfer of the ownership in the vessel to the merchant ; that the rudder and cordage, being bought for the vessel, must be considered as part of it ; and that this was not a case of possession, order, or disposition within the meaning of the statute. *Wood & al. v. Russell*, 5 B. & A. 942. See *Mucklow v. Mangles*, 1 Taunt. 318. So a mere temporary custody of goods, it seems, will not be within the statute. *Flinn v. Matthews*, 1 Atk. 185. and see *Muller v. Moss*, 1 M. & S. 335 ; and where the owner of deals sent them to a wharf for sale, and sent his servant to sell them as he could get customers, and the wharfinger became bankrupt, the deals did not pass to the assignees. *Boddy v. Esdaile*, 1 Car. & P. 62. Where the bankrupt at the time of his bankruptcy has goods in his possession as the servant of his father, for the purpose of carrying on the trade for the father's benefit only, the goods will not pass to the assignees under the assignment. *Stafford v. Clark*, 1 Car. & P. 24.

Where goods are sent to a trader upon sale or return, and he becomes bankrupt whilst they remain with him, they pass to his assignees, as being in his possession, order, and disposition. *Livesay v. Hood*, 2 Camp. 83. But where the trader only received the goods the evening before his bankruptcy, and in fact never unpacked them, nor was his shop ever opened afterwards, it was holden that they did not pass to his assignees. *Gibson v. Bray*, 1 Moor, 519, 8 Taunt. 76.

All the chattel property of a woman vests of course in her husband upon marriage, and passes to his assignees upon his bankruptcy. Even in a case where a woman, who kept a public house, said she was married to a man named Penrice, and had his name entered in the excise books, with a note in the margin, " Married ;" Penrice from that time had the license, and continued in possession of the house and goods until his bankruptcy ; and the woman then denied that she had ever been married to him, and claimed the goods : it was holden clearly that this was a case within the statute, and that the property in the goods passed to the assignees. *Mace v. Cadell*, Cowp. 232. So, where household furniture, the property of a widow and her children, were upon her second marriage assigned to trustees in trust to suffer the husband to enjoy them, on condition that he should pay to the trustees, for the use of the children, £800, by yearly instalments of £100 each ; he continued in possession for two or three years, and up to his bankruptcy, and at that time had paid £250 on account of them : it was holden that they passed to the assignees, under



the statute, as being in his possession, &c. as reputed owner. *Darby v. Smith*, 8 T. R. 82 But where upon marriage, goods are vested in trustees for the separate use of the wife, to enable her to carry on a separate trade, the husband's living with her will not be such a reputed ownership in him as to make these goods pass to his assignees upon his bankruptcy. *Haselington v. Gill*, 3 T. R. 620, n. *Jarman v. Woolloton*, Id. 618.

Where mere moveable chattels are leased, either with or without a messuage or land, they will pass to the assignees of the lessee, as the reputed owner of them, upon his bankruptcy. Where a creditor, after taking in execution the household furniture and other goods of a trader, let them to him by deed for a term of years, and he covenanted not to remove them without the creditor's consent; the trader continued in possession for several years, and then became bankrupt: it was holden that as the bankrupt was the reputed owner, and appeared to have the order and disposition of the goods, they passed to his assignees. *Lingham v. Biggs*, 1 B & P. 82. So where a creditor, having purchased, under a bill of sale from the sheriff, machinery of his debtor seized in execution at his suit, and having marked it with the initials of his name, allowed the debtor to retain the possession of it, upon his agreeing to pay a rent for the use of it; and the debtor remained in possession of it, until he committed an act of bankruptcy: it was holden that as the change of ownership was not notorious, the bankrupt must be deemed to have the reputed ownership of the goods, and that they therefore passed to his assignees. *Lingard v. Messiter*, 2 D. & R. 495, 1 B. & C. 308. and see *Storer & al. v. Hunter*, 5 D. & R. 240. So, where a distillery, with coppers, vats, stills, &c. were let on lease to traders, who became bankrupt, it was holden that the stills, &c, which were fixed to the freehold did not pass to the assignees, but that the vats and other things which were moveable did, as being in the reputed ownership of the bankrupts. *Horn v. Baker*, 9 East, 215. So where a dyer, having purchased a plant of J. S. and being unable to pay for it, resold it to J. S.; who, however, instead of taking possession of it, demised it to the dyer for three years at a certain rent; and the dyer within that time became bankrupt; it was holden that it passed to his assignees. *Bryson v. Wylie*, 1 B. & P. 83, n. *Cook*, 362. But where a colliery, with all the machinery and implements for working was leased for years with a proviso for re-entry by the landlord on non-payment of rent, and a covenant on the part of the lessee at the expiration or other sooner determination of the demise to deliver up the machinery and implements, conformably to an inventory annexed to the lease, of which a re-valuation was to be made three

months before the expiration of the demise, and the landlord recovered judgment in ejectment in Trinity term for a forfeiture in not paying rent, but did not execute the writ of possession until the 8th of November following, being the day before the tenant committed an act of bankruptcy. Held that the landlord was entitled take to possession of the machinery and implements (some of which had been brought on the premises by the tenant during the term) though no previous valuation had been made—that the possession of the machinery and implements by the tenant was only qualified, and did not come within the meaning of 21, Jac. 1, c. 19. so as to bar the landlords' right of entry on the 8th of November, and that the tenant's use of the machinery and implements in the interval between the judgment in ejectment and the execution of the writ of possession, did not give him the "possession order or disposition" thereof, with the consent of the true owner within the meaning of the statute, so as to pass the property to his assignees. *Storer v. Hunter*, 5 Dow & R. 240, 3 B. & C. 368; and furniture in a ready furnished private house will not, it seems, pass to the assignees, unless there be circumstances in the case shewing clearly a reputed ownership; for the mere possession is of itself too equivocal to lead to such a conclusion, *Semb. see* 1 B. & P. 88. *per Eyre, C. J.* So, where a testator directed, in case his son should carry on his trade for the benefit of himself and his mother, that his lease and furniture should not be sold, but that his trustees should permit his widow and children to reside in his dwelling-house and have the use of his furniture: the son and mother carried on the trade, and became bankrupts: it was holden that the furniture did not pass to the assignees. *Ex p. Martin*, 2 Rose, 331. So furniture left by a testator to trustees, to be enjoyed with the mansion-house by whomsoever should be entitled for the time to the freehold estates, but not to be removed without the leave of the trustees, will not pass to assignees. *Earl of Shaftesbury & al. v. Russell*, 1 B. & C. 666. So, goods let out on hire, and which by custom are so let out, such for instance as a stocking frame let for hire to a working hosier in one of the manufacturing districts, will not pass to assignees. *Semb. per Lawrence, J.* 3 Taunt. 490. But where the possession of property was under an instrument, apparently a lease, but in fact an agreement to secure the seller the price to be paid for the property with interest at 10 per cent. it passed to the assignees. *Sinclair v. Stevenson*, 2 Bing. 514.

Where an officer in the East India Company's service, having the privilege of shipping a certain quantity of goods from the East Indies to England, assigned it for a valuable consideration to J. S.; the goods were shipped, brought to England, and sold

by the East India Company in the name of the officer; but before the officer could receive the proceeds from the Company, to pay it over to the real owner of the goods, he became bankrupt: it was holden that, he being the reputed owner of these goods, the right to the proceeds passed to his assignees. *Gordon v. East India Company*, 7 T. R. 228.

The statute, however, does not include goods which the bankrupt holds as trustee, or in *auter droit*, as shall be stated more fully, *post*, p. 150.

Where the bankrupt was the original owner of the goods, his possession of them at the time of his bankruptcy will be *prima facie* evidence that he continued in possession as owner of them to that time; but this may be rebutted by evidence shewing in what manner he ceased to be owner, and other circumstances to prove that it is not a case within the statute. *See Lingard v. Messiter*, 1 B. & C. 308, 2 D. & R. 496. And evidence of reputation of ownership is receivable in such a case, *Oliver v. Bartlett*, 1 B. & B. 269, as is also evidence of a contrary reputation of ownership in the true proprietor. *Gurr v. Rutton*, 1 Holt, 327.

*Property of the bankrupt in the possession of others.]* The general rule upon this subject may be stated thus: All property of the bankrupt which was in the possession of others at the time of the act of bankruptcy, vests in his assignees, subject to any lien or claim the holders may legally have upon it; and all property of the bankrupt, which was in his possession at the time of the act of bankruptcy, but which has come into the possession of others since, (*see King v. Leith*, 2 T. R. 141,) either by conveyance, sale, payment, or otherwise, vests in the assignees, free of all lien or claim the holders may pretend to have upon it. To this rule, however, there are some exceptions, which we shall notice hereafter. We shall now treat of it more particularly, under the following heads:—

1. All property holden by others in trust for the bankrupt, passes to the bankrupt's assignees by the assignment and bargain and sale. The old statute (13 Eliz. c. 7. § 2.) expressly stated this. The present statute does not; but there can be no doubt that such trust property is within the meaning of it.

2. All property of the bankrupt, mortgaged or pledged to others by the bankrupt, before his bankruptcy, vests in the assignees, subject to the claim or lien the mortgagee or pawnee has upon it; or, in other words, the equity of redemption in the case of a mortgage, and the right to redeem, and the right of property when redeemed, in the case of a pledge, pass to the assignees by the assignment and bargain and sale. *Ante*, p. 89. 91, 117. So goods of the bankrupt, in the hands of others,

who lawfully have a lien upon them, pass in like manner to the assignees, subject to such lien. *See ante*, p. 103. These subjects have been fully treated of before ; it merely remains here to state the cases in which the holders of the goods of others may legally claim a lien upon them.

Liens are either general or particular : general liens, that is to say, liens for the general balance due to the party, arise from express contracts, or from contracts implied from the usages of particular trades, &c. or from the usual course of dealing between the parties ; particular liens are liens for business done, or money expended, in respect of the goods on which the lien is claimed, 2 *Sel. N. P.* 1276. The former are not much favoured by law ; the latter are. By " general balance " here is meant merely the balance coming to the party claiming the lien, for work done or money advanced or expended, &c. by him in the particular business or trade, and not for money lent, or other collateral matter. *Weldon v. Gould*, 3 *Esp.* 268. *und see Houghton & al. v. Matthews*, 3 *B. & P.* 485. A factor indeed has a lien for money advanced by him upon the goods consigned to him ; *see Hammonds v. Barclay*, 2 *East*, 227 ; but the goods, in that respect are considered in the nature of a pledge,

Factors and brokers have a lien on the property of their principals in their possession, for their general balance. *Gardener v. Colman*, 1 *Bur.* 494, *cit.* *Hammonds v. Barclay*, 2 *East*, 227. *Mestaer v. Atkins*, 5 *Taunt.* 381, 1 *Marsh.* 76. *R. v. Lee*, 6 *Price*, 369. *Hudson v. Granger*, 5 *B. & A.* 27. *Drinkwater v. Goodwin*, *Cowp.* 251. *Robson v. Kemp*. 4 *Esp.* 233. So have packers, *Ex parte Deeze*, 1 *Atkins*, 228. *Kruger v. Wilcox*, *Amb.* 252, wharfingers, *Naylor v. Mangles*, 1 *Esp.* 109. *Spears v. Hartley*, 3 *Esp.* 81, calico printers, *Weldon v. Gould*, 3 *Esp.* 268. *Ex p. Andrews*, *Cook*, 423, and dyers. *Saville v. Barchard*, 4 *Esp.* 53. *Rushfield v. Hadfield*, 6 *East*, 523, *arg.* *Brown v. Letton*, 1 *P. Wms.* 141. *See Green v. Farmer*, 1 *W. Bl.* 654, 4 *Bur.* 2114. *Close v. Waterhouse*, 6 *East*, 523, *n. cont.* So, a banker has a lien for his general balance upon all bills and other securities of his customer in his hands ; *Davis v. Bowsher*, 5 *T. R.* 488. *Scott v. Franklin*, 15 *East*, 428. *Jourdaine v. Lefevre*, 1 *Esp.* 66 ; and a banker having discounted bills for the customer or accepted bills for his accommodation, has, while such bills remain unpaid, a lien on any negociable securities of the customer which may come to his hands and may be put in suit, and even where, taking into account the bills on both sides, the customer has a balance in his favour of a sum not equal to the amount of any one of them ; this surplus cannot be appropriated to any one of the bills in re-

duction of the claim of the banker suing any of the parties to the bill. *Bollard v. Bygrave*, 1 R. & M. 271 ; but subject to this lien all bills and securities of the customers remaining in the banker's hands unpaid or unsatisfied, are and continue to be the property of the customer ; and if the banker were to become bankrupt, the Lord Chancellor, upon petition, would order his assignees to give them up, upon the customer's satisfying the lien, and giving a sufficient indemnity as to any acceptances the banker might be under for him ; *Ex p. Buchanan*, 1 Rose, 280. *Ex p. Burton Bank*. *Ex p. Harford*, 2 Rose, 162. *Ex p. Sollers*, 1 Rose, 155, 18 Ves. 229. *Ex p. Pease*, 1 Rose, 232, 19 Ves. 25. *Ex p. Wakefield, Bank*, 1 Rose, 243. *Ex p. Leeds Bank*, 1 Rose, 254. *Ex p. Waring*, 2 Rose, 182. *Ex p. Parr, Buck*, 191 ; and the circumstance of the bills being indorsed or not, makes no difference. *Ex p. Twogood*, 19 Ves. 229. So a policy broker has a general lien upon the policies in his hands ; *Levy v. Barnard*, 2 Moor, 34. *Whitehead v. Vaughan. Cook*, 576. and see *Mann v. Shiffner*, 2 East, 523 ; an attorney, upon the papers in his hands, and upon the damages, costs, &c. awarded to his client. 1 Arch. Pr. B. R. 38. and see *Stevenson v. Blakelock*, 1 M. & S. 535. *Middleton v. Hill*, 1 M. & S. 240. *Randall v. Fuller*, 6 T. R. 456. *Mitchell v. Oldfield*, 4 T. R. 123. *Ex p. Stirling*, 16 Ves. 258. *Cowell v. Simpson*, *Id.* 275. *Ex p. Bullen*, 1 Rose, 134. *Ex p. Hardy*, *Id.* 395. *Ex p. Bryant*, 2 Rose, 237, 1 Mad. 49. *Ex p. Moule*, 5 Mad. 462. *Lambert v. Buckmaster*, 2 B. & C. 616. *Redfearn v. Sowerby*, 1 Swanst. 84. *Commerell v. Poynton*, *Id.* 1. And a party may thus claim a lien for his general balance, even although his debt be barred by the statute of limitations. *Spears v. Hartley*, 3 Esp. 81.

But a carrier or an owner or captain of a ship has not a lien on the goods in his hands for his general balance ; he has a lien merely for the carriage of those particular goods ; *Rushforth v. Hadfield*, 7 East, 224. *Butler v. Wooltot*, 2 New R. 64. *Wolf v. Summers*, 2 Camp. 631. *Skinner v. Upshaw*, L. Raym. 752. *Meek v. Tate*, 2 Moor, 278. *Yates v. Railston*, *Id.* 294. *Yates v. Mennell*, *Id.* 297. and see *Lambert v. Robinson*, 1 Esp. 119 ; and he may refuse to deliver up the goods until his lien be satisfied ; *Sodergreen v. Flight*, 6 East, 622, n. *Meek v. Tate*, 2 Moor, 278 ; but the owner of a ship has no lien upon the cargo for dead freight or demurrage. *Phillips v. Rodie*, 15 East, 547. *Birtey v. Gladstone*, 3 M. & S. 205, 2 Merivale, 401. And where a vessel was consigned by a master and part owner to ship brokers on commission, and the ship papers delivered over to them and they made disbursements on account of such master and part owner, who

afterwards became bankrupt, the ship owners were held to have a lien on the papers for the balance due to them on account of their disbursements. *Thompson v. Beatson*, 7 Moore, 548. So shipwrights, *Franklin v. Hosier*, 4 B. & A. 341. *Raitt v. Mitchell*, 4 Camp. 146; millers, *Ex p. Ockendon*, 1 Atk. 235. *Chase v. Westmore*, 5 M. & S. 180, fullers, *Rose v. Hart*, 2 Moor, 547, 8 Taunt. 499. *Sweet v. Pym*, 1 East, 4, and innkeepers, *Yelverton*, 66, have particular, not general, liens. A livery stable keeper may by express contract have a lien for the keep of horses, and in such case if the owner fraudulently take the horses out of the possession of the stable keeper, the stable keeper may without force re-take possession, and the lien will revive. *Wallace v. Woodgate*, 1 R. & M. 193. And a printer, employed to print certain numbers, though not consecutive ones, of an entire work, has been holden entitled to a lien upon the copies not delivered, for the balance due to him for printing the whole of such numbers, *Blake v. Nicholson*, 3 M. & S. 167. So all other tradesmen have particular liens upon the goods of their customers in their hands. See 2 Sel. N. P. 1281. So the manufacturer or vendor of an article, whilst in his possession, has a particular lien for the price of it, until paid, *Hanson v. Meyers*, 6 East, 614, even although he may have obtained judgment for the amount of it in an action for goods bargained and sold; *Houlditch & al. v. Deranges & al.* 2 Stark, 337; although it might be otherwise if the action were for goods sold and delivered. *Id.* So has the vendor of an estate a lien upon for the purchase money. *Ante*, p. 91. So a lord has a lien upon an estray for its keep. *Taylor v. James*, 2 Ro. Abr. 92. Also the captain and seamen of a ship have a lien upon it for their wages; *Rich v. Coe*, Cowp. 636. *Ex p. Shank*, 1 Atk. 234. *Watkinson v. Barnardiston*, 2 P. Wms. 367, but see *Wilkins v. Carmichael*, Doug. 101; but for disbursements, or money laid out in repairs or the like, the captain has no lien either upon the ship, *Hussey v. Christie*, 9 East, 426. or on the cargo. *Smith & al. v. Plummer & al.* 1 B. & A. 575.

Where a quantity of timber, placed in a dock on the bank of a navigable river, being accidentally loosened, was carried by the tide to a considerable distance, and left at low water upon a towing path; and a person finding it, conveyed it to a place of safety: it was holden that he had no lien upon it, for the expense he had incurred in carriage, &c., although perhaps he might have maintained an action against the owners for the amount of it. *Nicholson v. Chapman*, 2 H. Bl. 254. But upon goods saved, which have been abandoned or lost at sea, it seems, the party has a lien. *Per Holt, C. J. in Hartford v.*

*Jones*, 1 *L. Raym.* 393, 2 *Salk.* 654. It is clear, however, that where a person obtains the possession of goods by wrong, he has no lien upon them, even for expenses to which he has necessarily been put with respect to them, such as freight, charges, &c. *Lempriere v. Pasley*, 2 *T. R.* 485. and see *Madden v. Kempster*, 1 *Camp.* 12. Where property is lodged as a security with the acceptor of an accommodation bill, by the drawer, the holder of the bill has no lien upon that property. *Ex p. Waring*, 2 *Rose*, 182. So, if A. consign a cargo to B. directing him to pay the proceeds to C. and writes to C. to that effect, this gives no lien to C. upon the proceeds. *Ex p. Heywood*, 2 *Rose*, 355. and see 1 *Stark.* 143.

If goods be delivered to a man for a particular purpose, he shall not have a lien upon them for his general balance. Where a trader, on being applied to by a creditor for a debt of £47, gave him a bill of £100 to get discounted, to pay his own debt out of it, and pay over the surplus; and before the bill was discounted, the trader became bankrupt: it was holden that the creditor had no lien upon the bill for his debt, but that the assignees were entitled to it. *Humphries v. Wilson*, 2 *Stark.* 566. So where a trader gave a bill to a creditor to raise money on it for him, and the creditor advanced him a part; it was holden that upon the bankruptcy of the trader his assignees were entitled to bill, upon paying or tendering to the creditor the sum he had actually advanced upon it, and that the creditor had no lien upon it for his debt. *Key v. Flint*, 8 *Taunt.* 21, 1 *Moor*, 451. So if goods be given to a factor to sell, and he promises to pay over the proceeds to the owner or to a third party, and they are not sold: he cannot claim a lien upon them for his general balance; for they were lodged with him for a specific purpose. *Kinloch v. Craig*, 3 *T. R.* 119. *Walker v. Birch*, 6 *T. R.* 258. See *Mestaer v. Atkins*, 1 *Marsh.* 76, 5 *Taunt.* 381, *semb. cont.* So where A. and B. had joined in a contract to supply provisions to the navy, and A. indorsed to B. a bill of lading of a cargo of provisions which he had shipped for the purposes of the contract: it was holden that this did not give B. any lien upon the cargo for any debt due to him by A. *Snaith v. Burridge*, 4 *Taunt.* 684. So, where a factor obtained the certificate of registry from the captain of a ship, for the purpose of paying the duties, it was holden that he had no lien upon it for a general balance due to him by the ship owner. *Burn & al. v. Brown & al.*, 2 *Stark.* 272. See *Mestaer v. Atkins*, *supra.* So, a banker, who refused to advance money upon a lease, and which was afterwards left in his hands by mistake, was holden to have no lien upon it for his general balance. *Lucas v. Derrien*, 7 *Taunt.* 276, 1 *Moor*, 29.

So, where the parties contract for a particular time or mode of payment, there is no right even to a particular lien, inconsistent with the terms of the contract. See *Chase v. Westmore*, 5 M. & S. 180. *Cowell v. Simpson*, 16 Ves. 275. Even where such a contract can be implied; as, for instance, where by the usage of trade shipwrights give a certain credit to shipowners for repairs done to their ships, they have no lien on the ships for the amount of such repairs; *Rait v. Mitchell*, 4 Camp. 146; and where it appeared that by the usage of the iron trade a certain time was given to the importer for paying the charges of wharfage, &c., it was holden that the wharfinger had no lien for his charges, even after the expiration of that time. *Crawshaw v. Homfray*, 4 B. & A. 50. If by agreement on the dissolution of a partnership, specific articles are to become the separate property of one partner, and the debts are to be paid out of a particular fund which proves deficient, the retiring partner has no lien on these specific articles in respect of the deficiency. *Lingen v. Simpson*, 2 Sim. & S. 600. But a mere contract as to price will not have this effect, *Wolf v. Summers*, 2 Camp. 631. *Chase v. Westmore*, 5 M. & S. 180, although formerly holden otherwise. *Brenan v. Currint, Say*, 224. And where, by the terms of a charter party, the captain of a ship is to be paid his freight by "good bills" at certain dates, he may refuse to deliver up the cargo until the bills have been given to him; See *Meek v. Tate*, 2 Moor, 278. *Yates v. Railston*, Id. 294. *Yates v. Mennell*, Id. 297; but if bills be taken and put into circulation, the lien is thereby determined, whether the bills turn out to be good or bad. *Horncastle v. Farran*, 3 B. & A. 497, 2 Stark. 590. On the other hand, a contract express or implied, may operate to create a lien where there was none: for instance, where a number of pressers, bleachers, &c., at a public meeting agreed that they would not receive any more goods to be bleached, &c., but on condition that they should have a lien on them for their general balance; it was holden that any one, who, after notice of it, delivered goods to any of those persons, must be deemed to have acquiesced in the terms of the agreement, and that the goods sent would be subject to the general lien accordingly. *Kirkman & al. v. Shawcross*, 6 T. R. 14.

To constitute a lien, as against the assignees of a bankrupt, the goods, &c. must have been in the party's possession previously to the act of bankruptcy. *Copland v. Stein*, 8 T. R. 199. *Hovill v. Lethwaite*, 5 Esp. 158. *Meyer v. Sharpe*, 5 Taunt. 74. and see 2 Ves. 286. *Nicols v. Clent*, 3 Price, 547. But where a trader placed goods in the hands of a factor for sale, before an act of bankruptcy, it was holden that the factor might sell them after the bankruptcy, and retain the proceeds to answer his own debt.



*Robson & al. v. Kemp & al.* 4 Esp. 238. And in all cases, the goods, &c. must be in the possession of the party, at the time, otherwise he cannot claim a lien upon them; *Taylor v. Robinson*, 2 Moor, 730, 8 Taunt. 648. *Ex p. Shank*, 1 Atk. 235. *Kinloch v. Craig*, 3 T. R. 119, 783. *Holland v. Waring*, 4 Camp. 291; if he once part with them out of his possession, his lien is determined. *Sweet v. Pym*, 1 East, 4. *Hartley v. Hitchcock*, 1 Stark. 408. *Ex p. Shank*, 1 Atk. 235. and see *Ward v. Filton*, 1 East, 512. *Chalmers v. Page*, 3 B. & A. 697. But if the goods, &c. come again into his possession, the lien, it seems, revives. *Levy v. Barnard*, 8 Taunt. 149, 2 Moor, 34. *Ex p. Deeze*, 1 Atk. 228. See *Hartley v. Hitchcock*, 1 Stark. 408, *semb. cont.* So, by proving his debt under a commission against the owner of the goods, *Ex p. Hornby*, Buck, 351, or at least, after having proved his debt, if he do any act as a creditor, affecting the rights of others, such as signing the certificate or the like, *Ex p. Solomon*, 1 Glyn & J. 25, he waives his right of lien. So if he take a security for his debt, he waives his lien. *Cowell v. Simpson*, 16 Ves. 275. So, if he claim the goods on another ground, when they are demanded, and make no mention of the lien, an action of trover may be maintained against him for them, without making him any previous tender with respect to his lien. *Boardman v. Sill*, 1 Camp. 410, n. and see *Martini v. Coles*, 1 M. & S. 147. So, as soon as the interest of the pawnor, &c. in the goods, and of those claiming under him, ceases, the lien ceases also: as, for instance, where plate was left to A. for life, and after his death to B.; and A. pledged it with a pawnbroker; it was holden that the pawnbroker, although he had no notice of the settlement, could not claim a lien upon the plate, as against the remainderman, after the death of the tenant for life. *Hoare v. Parker*, 2 T. R. 376.

But it is only against the owner of the goods, &c. that the holder can claim a lien. If an agent employ an insurance broker to effect an insurance in his name, at the same time informing him that the property belongs to another, the broker has no lien upon the policy for a general balance due to him by the agent; *Snook & al. v. Davidson & al.* 2 Camp. 218. and see *Mann v. Shiffner*, 2 East. 523; even although the agent, when he gives him orders to effect the insurance, represent that he has authority to indorse the bill of lading. *Lanyon v. Blanchard*, 2 Camp. 597. And where an English subject, during a war, informed the broker that the goods were neutral property, that was deemed a sufficient indication to the broker that the party acted as agent merely. *Manners v. Henderson*, 1 East. 335. But where they have no notice whatever that the party acts as agent merely, it is otherwise. *Mann v. Forrester*, & al. 4 Camp. 60.

*Westwood v. Bell*, *Id.* 349. So, the agent for an attorney has no lien upon money recovered by him in a suit for a client, *Moody v. Spencer*, 2 D. & R. 6, beyond the amount of his charges for agency in that particular suit. *White v. Royal Exchange Assurance*, 1 Bing. 20. See *Ward v. Hepple*, 15 Ves. 297, *cont.* So if a factor or agent pledge the goods of his principal (which he cannot lawfully do), the pawnee has no lien upon them, as against the principal, for money advanced, &c. to the agent. *MacCombie v. Davies*, 7 East, 5. *Martini v. Coles*, 1 M. & S. 140. *Graham & al. v. Dyster*, 2 Stark, 21. *Delauncey v. Barker*, 2 Stark. 539. and see *Guerreiro v. Peile*, 3 B. & A. 616.

3. Property of the bankrupt in the hands of others, which he has specifically appropriated before his bankruptcy, will not pass to his assignees. As where the bankrupt before the bankruptcy gave a creditor an order on the executor of his debtor to pay the debt to the creditor, and the executor received the order and detained it till he received sufficient assets, the creditor was held entitled to recover the debt. *Ex p. Smith*, 3 Swan, 392. A merchant had advanced money to a trader, upon an agreement that the trader should consign a cargo of fish to J. S. for sale, and that J. S. should remit the proceeds through the medium of the merchant, in order that he might secure himself for his advances; the cargo of fish was consigned, but the trader afterwards wrote to J. S. informing him that the cargo was not responsible for the advances of the merchant; J. S. however remitted the proceeds to the merchant: in an action by the assignees of the trader (who had become bankrupt) against J. S. for the amount of the proceeds of the cargo, it was holden, that this was an appropriation of the proceeds for the payment of the advances, which the trader could not afterwards rescind, and that consequently the assignees could not recover. *Fisher & al. v. Miller*, 1 Bing. 150. So, where a trader consigned goods to a merchant abroad, who was to remit the proceeds to his agent here for the trader; and the trader drew bills upon the agent to the value of the consignment, who accepted them, under a promise by the trader to provide for them, if the proceeds should not be remitted to him in time; after the bills were accepted, and before the remittance of any proceeds, the trader became bankrupt; after which the agent received the proceeds, and paid the bills: it was holden that the assignees had no right to recover the value of the proceeds, to the amount of the bills, these proceeds having been specifically appropriated to the payment of the bills by the bankrupt, before his bankruptcy. *Thomas v. Da Costa*, 2 Moor, 386. and see *Waller & al. v. Drakeford*, 1 Stark. 481. So, where a trader, having shipped goods for Hamburg, drew bills upon J. S. and as a collateral security lodged

with him the bills of lading, but without indorsing them ; the ship was prevented from going to Hamburgh by an order in council ; and in the mean time, the trader having become bankrupt, another of his creditors got possession of the goods, and sold them : it was holden that J. S. was entitled to the produce of the sale, the goods having been specifically appropriated to the payment of his acceptances by the bankrupt before his bankruptcy. *Favenc & al. v. Hullett & al.* 1 Camp. 554. But a mere general agreement, *Carter v. Barclay*, 3 Stark. 43, or a mere direction by the principal to his agent to pay, &c., *Scott v. Porcher & al.* 3 Merivale, 652, cannot be considered in the light of a specific appropriation. See *R. v. Hunter*, 4 Price, 258.

4. As to goods purchased by the bankrupt, but not delivered to him : if they still remain in the hands of the vendor, not delivered,—as he has a lien upon them for the purchase money (see *ante*, p. 149), the assignees, until they satisfy the vendor in that respect, cannot of course get possession of them, so as to dispose of them for the benefit of the creditors ; if the vendor have sent them, but they have not as yet been delivered to the bankrupt, the vendor may stop them *in transitu* ; but when goods have been delivered to the bankrupt, then of course they pass to the assignees together with the rest of the bankrupt's property. The only thing necessary to be noticed here particularly, therefore, is the doctrine of stoppage *in transitu*.

Where goods are sold upon credit, and sent by the vendor to the vendee, the vendor may, in case of the insolvency or bankruptcy of the vendee, stop them *in transitu*, and thereby prevent their being delivered to the vendee ; in which case, of course, the property in them does not pass to the assignees. See *Wiseman v. Vandeput*, 2 Vern. 203. *Stokes v. La Riviere*, 3 T. R. 466, *cit.*, 3 East, 397, *cit.* And goods may be thus stopped *in transitu*, whether the carrier, or particular conveyance by which they are sent, have been appointed and employed by the vendee, *Hodgson v. Loy*, 7 T. R. 440, or not ; *Assignees of Burghall v. Howard*, 1 H. Bl. 366, *n* ; even when shipped on board a ship chartered by the vendee himself, they may be stopped at any time before they are actually delivered to him at the place of their destination. *Bohtlingk v. Inglis*, 3 East, 381. *Holst v. Pownal & al.* 1 Esp. 240. and see *Inglis v. Usherwood*, 1 East, 515. So, whether bills of lading have been indorsed to the vendee or not, *Feise v. Wray*, 3 East, 93. *Solomons v. Nissen*, 2 T. R. 674. *Siffken v. Wray*, 6 East, 371, or whether the vendee have accepted bills for the goods, *Kinloch v. Craig*, 3 T. R. 119, 783, or even in part paid for them, *Hodgson v. Loy*, 7 T. R. 440, or not, is immaterial. No person can stop goods *in transitu*, how-

ever, except the owner of them, or some person on his behalf ; it cannot be done by a person who merely claims a lien upon them, *Sweet v. Pym*, 1 *East*, 4, or who is merely surety for the vendee, by having accepted bills for their amount, *Siffken v. Wray*, 6 *East*, 371, or the like ; but where a trader here, gave an order to his correspondent abroad to ship him goods, which the latter purchased upon his own credit, without naming the trader here, and shipped to him at the original price, charging only his commission : it was holden that the shipper was so far the vendor of the goods, as between him and the trader here ; that upon the bankruptcy of the latter he might stop the goods *in transitu*. *Feise v. Wray*, 3 *East*, 93. And where a British subject, in time of war, obtained a license from his government to trade at an enemy's port, this, by legalizing the purchase by the subject, legalized the sale by the enemy, and was holden to have impliedly legalized the vendor-enemy's right of stoppage *in transitu*, and his appointment of an agent here for that purpose. *Fenton v. Pearson*, 15 *East*, 419.

And this right of a vendor may be exercised at any time before the actual delivery of the goods to the vendee. What amounts to such a delivery, is generally the point in litigation. If the vendee order the goods to be sent to J. S., by him to be sent to a third person to whom they are to be consigned, a delivery of them to J. S. will be deemed a delivery to the vendee, after which the goods cannot be stopped ; *Dixon v. Baldwin*, 5 *East*, 175 ; but if the goods are to be sent to J. S., by him to be forwarded to the vendee himself, they may be stopped, either in the hands of J. S., or at any time before they are actually delivered to the vendee. *Stokes v. La Riviere*, 3 *T. R.* 466, *cit.*, 3 *East*, 397, *cit.* So if the vendee order the goods to be put on board a particular ship, to be carried to a third person to whom they are consigned, a delivery on board the ship, is a delivery to the vendee : *Fowler & al. v. M'Taggart & al.*, 7 *T. R.* 442, *cit.*, 1 *East*, 522, *cit.*, 3 *East*, 388, *cit.* ; but if the goods are to be put on board a particular ship, to be conveyed to the vendee himself, they may be stopped *in transitu* at any time before they are actually delivered to him. *Bohtlinck v. Inglis*, 3 *East*, 381, and *supra*. But where goods are ordered by the vendee to be sent to a packer or wharfinger, they may be stopped *in transitu* in his hands, whether the goods are to be forwarded from him to the vendee or to any other person, a packer or wharfinger being deemed a kind of middleman between the vendor and vendee, and the goods being in his possession are considered as merely at a stage in their transit ; *Bennett & al. v. Ward*, 3 *T. R.* 467, *cit.* *Mills v. Ball*, 2 *B. & P.* 457. *Smith & al. v. Goss*, 1 *Camp.* 282 ; but where the ware-

house of the packer or wharfinger cannot be deemed a stage in the transit of the goods, but the place of their ultimate destination (the vendee having no other warehouse, or designing to make use of the packer's or wharfinger's warehouse as his own), in that case a delivery to the packer or wharfinger will be deemed a delivery to the vendee. *Scott v. Pettit*, 3 B. & P. 469. *Per Chambre, J. in Richardson v. Goss*, 3 B. & P. 127, and see *Ellis v. Hunt*, 3 T. R. 464. So, where goods are by the order of the vendee delivered at a place, which is not a mere stage in their transit, but the end of their journey for the present, and until another destination shall be given them by the vendee, a delivery of them at that place will be deemed a delivery to the vendee. *Leeds & al. v. Wright*, 3 B. & P. 320. *Rowe v. Pickford*, 8 Taunt. 83. and see *Wright v. Lawes*, 4 Esp. 82. See *Hunter & al. v. Beal*, 3 T. R. 466, *cit. semb. cont.*; but see 5 East, 184. But where goods, to be paid for on delivery, were delivered at a packer's for the vendee, and the price demanded at the time, but not paid; and the packer was informed of the fact: he was holden to be a trustee for the vendor until payment, and that in the mean time the goods might be stopped *in transitu*, although the vendee had no other warehouse. *Loesekman v. Williams*, 4 Camp. 181. So if goods be obtained by fraud, a delivery of them to the packer or wharfinger of the vendee will not, under any circumstances, pass any property in them to the vendee. *Noble v. Adams*, 7 Taunt. 59.

But there may be a delivery to the buyer, such as to preclude the vendor from afterwards stopping the goods *in transitu*, although the goods have never been removed from the place in which they were at the time they were sold. If sugars or other property in the warehouses of the West India Docks be sold, an indorsement and delivery of the warrant by the vendor to the vendee, is deemed a delivery of the goods to the vendee. *Spear v. Travers & al.* 4 Camp. 251. So, where the owner of goods at a wharf sold them, and gave the vendee an order upon the wharfingers to deliver them; the vendee lodged the order with the wharfinger, who thereupon transferred the goods in his books into the name of the vendee, and charged him thenceforth with the warehouse rent for them: this was holden to be a delivery of the goods to the vendee, so that they could not afterwards be stopped *in transitu* upon his insolvency. *Harman v. Anderson*, 2 Camp. 243. So, if a man sell goods, and they remain even in his own warehouse, by desire of the vendee, yet if the vendee pay him warehouse rent for them, this shall be deemed a delivery of them to the vendee, and they shall not afterwards be stopped *in transitu*. *Hurry v. Mangles*, 1 Camp. 452. Where A., having 40 tons of oil in a cistern, sold 10 tons of

it to B, ; B. sold these 10 tons to C., and gave him an order upon A. for them, who wrote thereon, " Accepted, 14th February, 1809," and his name ; the oil, however, was not measured off, but remained still in the cistern : it was holden that this amounted to a delivery of the 10 tons of oil by B. to C., and that B. could not afterwards stop them *in transitu* upon the insolvency of C. *Whitehouse & al. v. Frost & al.* 12 East, 614. But where a trader agreed to purchase all the starch of the vendor in a particular warehouse belonging to a third person, the exact weight not being then ascertained ; and the vendor gave him an order to the warehouse-keeper to weigh and deliver it to him : it was holden that this was not a delivery of it to the vendee, inasmuch as the weighing of the starch, in order to ascertain the value of the parcel, must necessarily have preceded the delivery ; and that therefore, until weighed off, it might be stopped *in transitu*. *Hanson v. Meyer*, 6 East, 614. So where 50 tons, part of a cargo of Greenland oil, was sold, and the vendor had given to the vendee an order to the wharfinger to deliver it : this was holden to be no delivery of the oil, so as to prevent a stoppage *in transitu* ; because, according to the custom of the trade, before oil is delivered, the vendor's cooper examines the casks, a broker for vendor and vendee makes a minute of the foot, dirt, and water in each cask, and the casks are then filled up,—none of which were done in this case. *Wallace v. Breeds*, 13 East, 522.

But if the vendee or his assignees once get possession of the goods, the vendor's right of stoppage *in transitu* ceases. See *Coxe v. Harden*, 4 East, 211. *Ellis v. Hunt & al.* 3 T. R. 464, *cit.* Or if a part only be delivered to, or be taken possession of, by the vendee, the right of stoppage *in transitu* ceases as to the whole. *Slubey v. Heyward*, 2 H. Bl. 504. *Hammond v. Anderson*, 1 New R. 69. But where starch was sold, which required to be weighed before delivery, and a part only was weighed and delivered, this was holden not to be a delivery of the whole, and that the vendor had still a right of stoppage *in transitu* as to the remainder. *Hanson v. Meyer*, 6 East, 614. and see *Payne v. Shadbolt*, 1 Camp. 427. So where a quantity of iron was sent by a carrier to the vendee in the country, and the carrier actually landed a part of it on the vendee's wharf ; but then finding that the vendee had stopped payment, he reloaded it on board his barge, and took the whole of it to his own premises : this was holden not to be a delivery of any part of the iron, so as to divest the vendor of his right of stoppage *in transitu* ; for the carrier must be deemed not to have parted with the possession of even the part landed, until he had received his freight. *Crawshaw v. Eames*, 1 B. & C. 181 And even where the vendee

or his assignees take possession of the goods, yet if they be still in transit, this will not deprive the vendor of his right of stoppage *in transitu*, until the goods have arrived at their destination. Therefore, where goods were shipped at Leghorn for Liverpool, and before their arrival the consignee became bankrupt, the ship on her arrival was ordered to perform quarantine, pending which one of the assignees went on board and took possession; and in a few days after, and before the quarantine expired, an agent of the consignor stopped the goods *in transitu*: and it was holden that he might, because in order that a consignee in such a case may claim by virtue of his possession, it must be a possession acquired upon or after the completion of the voyage. *Holst v. Pownal and al.* 1 Esp. 240.

So where the right of property in goods in transit, vests in the vendee, subjected to be divested only by a stoppage *in transitu*, if the vendee in such a case assign his interest to another for a valuable consideration, the right of the original vendor to stop *in transitu* is thereby destroyed; *Lichbarrow v. Mason*, 2 T. R. 63, 1 H. Bl. 357, 2 H. Bl. 211, 5 T. R. 683. and see 6 T. R. 131, 6 East, 20—36, n. *Stoveld v. Hughes*, 14 East, 308. *Davies v. Reynolds*, 4 Camp. 267. *Keyser v. Suse*, 1 Gow, 58. *Dick v. Lumsden*, Peak, 189. and see *Craven v. Ryder*, 6 Taunt. 433; even although the party know at the time that the vendor had not received money payment for the goods, but had taken the vendee's bills for them, payable at a future day, and which day had not then arrived. *Cuming v. Brown*, 9 East, 506. But where a consignee indorsed and delivered the bill of lading to a person, upon condition that he would make advances to him, which he failed to do, but claimed to retain it as a security for prior advances: it was holden that as this assignment was made without consideration, it did not divest the consignor's right to stop the goods *in transitu*, upon the insolvency of the consignee. *Newsome v. Thornton*, 6 East, 17. and see *Solomons v. Nissen*, 2 T. R. 674. So a claim by the carrier to retain the goods, as having a lien upon them for a general balance due to him by the vendee, will not affect the vendor's right of stopping the goods *in transitu*. *Oppenheim v. Russell*, 3 B. & P. 42. *Richardson v. Goss*, Id. 119. Nor shall this right of the vendor be affected by the goods being seized under a foreign attachment by a creditor of the vendee, during their transit. *Smith & al. v. Goss*, 1 Camp. 282.

A stoppage *in transitu*, particularly if it take place after the bankruptcy of the vendee, must be an adverse proceeding as against him. And, therefore, where the vendor took possession under an amicable agreement with the vendee, after his bankruptcy, it was holden that the assignees were entitled to the

goods. *Siffkin v. Wray*, 6 East, 371. See *Mills v. Ball*, 2 B. & P. 457, per Chambre.

It may be necessary to mention, that where goods are specifically appropriated by the consignor, he cannot afterwards stop them *in transitu*. As, for instance, where J. S. indebted to a trader on the balance of accounts, including several bills which the trader had accepted for him, and which were then outstanding, consigned goods to him on account of this balance : it was holden that J. S. had no right to stop these goods *in transitu*, on the bankruptcy of the trader. *Vertue & al v. Jewel*, 4 Camp. 31.

Where a vendor has a right of stoppage *in transitu*, in order to exercise it he is not obliged to take actual possession of the goods ; if he give notice of his right to the person in whose possession they are, by claiming to have them delivered up to him, it is sufficient ; *Holst v. Pownal & al.* 1 Esp. 240. *Northey & al. v. Field*, 2 Esp. 613 ; and if they be afterwards delivered over to the assignees of the vendee, the vendor may sue the assignees for them. *Lett & al. v. Cowley & al.* Holt, 338, 2 Marsh, 457.

5. As to goods of a bankrupt seized under an execution : If the goods be actually seized under the execution before the act of bankruptcy, they may be sold at any time after the bankruptcy, to satisfy the judgment. *Stead v. Gascoigne*, 8 Taunt. 527. But if seized after the act of bankruptcy, although sold before the issuing of the commission, *Lazarus v. Waithman*, 5 Moor, 313 (unless the case come within one of the exceptions hereinafter mentioned) ; or if the execution be fraudulent or collusive ; as for instance, if, upon a writ of execution sued out before an act of bankruptcy committed, a warrant be made out, directed to the defendant's own shopmen, who take possession, and conduct the business as usual (but without the interference of the defendant), and on the day after the defendant commits an act of bankruptcy ; *Jackson & al. v. Irwin & al.* 2 Camp. 48 ; or if the warrant be made out to a sheriff's officer, but he be directed by the plaintiff not to sell, but merely to leave a man in possession, and the defendant be allowed to carry on his trade in the house as usual, for some months, until he becomes bankrupt ; *Toussaint v. Hartop*, 1 Holt, 335 ; or the like : in these cases, the goods seized will pass to the assignees under the assignment, notwithstanding the execution. So if, after an act of bankruptcy, a creditor of the bankrupt attach money of his in the hands of a third party, the assignees may recover it from the creditors, as so much money had and received to their use. *Sill v. Worswick*, 1 H. Bl. 665. *Phillips v. Hunter*, 2 H. Bl. 402. *Hunter v. Potts*, 4 T. R. 182.



6. Goods returned by a trader, before an act of bankruptcy, to a creditor from whom he purchased them, though not received by the creditor, or agreed to be accepted by him until after an act of bankruptcy, will not pass to the assignees under the assignment, *Fidgeon v. Sharpe*, 1 Marsh, 196. *Atkins v. Barwick*, 1 Str. 165. and see 4 Bur. 2239, Cowp. 125. *Salte v. Field*, 5 T. R. 211. *Graaffe v. Greffulhe*, 1 Camp. 89. *Moor v. Barthrop*, 1 B. & C. 5, 2 D. & R. 25, unless this be done to give a preference to the particular creditor, in fraud of the other creditors, in contemplation of bankruptcy. *Barnes v. Freeland*, 6 T. R. 80. *Neate v. Ball*, 2 East, 117.

7. As to voluntary conveyances: Property voluntarily conveyed by the bankrupt, without a valuable consideration, and which conveyance would be void as against his creditors by stat. 13 Eliz. c. 5, will pass to the assignees under the assignment or bargain and sale, and may be recovered by them. See *Glaister v. Hewer*, 8 Ves. 195, 9 Ves. 12, 11 Ves. 377. *Doe v. Manning*, 9 East, 59. *Walker v. Burrows*, 1 Atk. 93. and see *Roberts on Fraud. Conv. passim*. Money, however, it seems, is not within the act; and therefore money given by a father, before his bankruptcy, to his son, to advance him in a partnership, was holden not to be recoverable by the assignees. See *Kensington v. Chantler*, 2 M. & S. 36. See *Ex p. Hearn*, Buck, 165. *Brown v. Bellaris*, 5 Mad. 53. *Matthews v. Feaver*, 1 Cox, 278. And by stat. 6. Geo. 4. c. 16. § 73, if any bankrupt, being at the time insolvent, shall (except upon the marriage of any of his children, or for some valuable consideration,) have conveyed, assigned, or transferred to any of his children, or any other person, any hereditaments, offices, fees, annuities, leases, goods, or chattels, or have delivered or made over to any such person any bills, bonds, notes, or other securities, or have transferred his debts to any other person or persons, or into any other person's name, the commissioners shall have power to sell and dispose of the same as aforesaid; and every such sale shall be valid against the bankrupt and such children and persons as aforesaid, and against all persons claiming under him. One of the repealed acts (1 J. 1. c. 15. § 5.) contained a similar enactment. See *Emly v. Grey*, 3 Merivale, App. 702. *Kensington v. Chantler*, *supra*. *Crisp v. Pratt*, Cro. Car. 548. *Lilly v. Osborn*, 3 P. Wms. 298.

One of the repealed acts (13 El. c. 7 § 2.) contained a clause, by which lands, &c. purchased or obtained by the bankrupt for money or other recompense, jointly with his wife or child, for his own use, for such interest as he might lawfully part with should pass to the assigness. See *Fryer v. Flood*, 1 Bro. 160. There is no such clause in the present statute: and such estates

will pass to the assignees, only in case they come within the meaning of the stat. 13 El. c. 5. or 6 Geo. 4. c. 16. § 73. above mentioned. See *post*, p. 163, title, "*Property of the Bankrupt's Wife.*"

8. And lastly, as to property delivered by the bankrupt in contemplation of bankruptcy: If a bankrupt, knowing himself to be on the eve of bankruptcy, voluntarily give or assign goods, money, or other property, to one of his creditors, with a view of giving him a preference over the others, such assignment or transfer is void as against the other creditors, and, upon the bankruptcy of the debtor, his assignees may recover the property from the creditor thus preferred; it is not, indeed, prohibited by any particular statute, but it is deemed void as being a fraud upon the bankrupt laws. See *Crosby v. Crouch*, 2 Camp. 166, 11 East, 256. *Alderson v. Temple*, 4 Bur. 2235, 1 W. Bl. 660. Where bankers fraudulently sold out stock belonging to one of their customers, but afterwards, on the evening before their bankruptcy, sent him certain bonds to indemnify him, stating at the same time that they should be obliged to suspend their payments on the following morning: this was holden to be a fraudulent preference in contemplation of bankruptcy, and void, even although it appeared that the bonds had long before and whilst the bankers were solvent, been put by them into an envelope, with the customer's name upon it, and a memorandum of their being so deposited as a collateral security for the stock until replaced, but which circumstance was unknown to the customer. *Wilson & al. v. Balfour*, 2 Camp. 579. So, where a trader, intending to commit an act of bankruptcy, made out a bill of parcels of certain goods to one of his creditors, to whom he wished to give a preference, and sent it to him, together with an order upon the person in whose possession the goods then were, to deliver them to him, and he got them accordingly: it was holden that this, although in form a sale, being merely colourable for the purpose of giving a preference to the particular creditor, was void, and that the assignees of the debtor, upon his bankruptcy, were entitled to recover the value of the goods from the creditor. *Rust v. Cooper*, Cowp. 629. and see *Nixon v. Jenkins*, 2 H. Bl. 135.

This preference, however, must have been given in contemplation of bankruptcy; and therefore if it appear that the bankruptcy was not contemplated at the time, although it actually did take place afterwards, the property assigned and transferred to the creditor will not be recoverable by the assignees of the debtor. *Wheelwright v. Jackson*, 5 Taunt. 109. *Fidgeon v. Sharp*, 1 Marsh, 196. *Yeates v. Groves*, 1 Ves. 280. But if the

assignment or transfer took place under circumstances which might reasonably lead the debtor to believe his bankruptcy probable, though not inevitable, it will be sufficient to invalidate the transaction. *Poland v. Glyn*, 2 D. & R. 310.

It must be done with a view of giving the creditor a preference over the other creditors of the debtor ; and therefore if, in a fair course of business, a man pay a creditor who comes to be paid, this being a fair transaction in the course of business, the payment is good, notwithstanding the debtor's knowledge of his own affairs, and his intention to break. *Per* *Ld. Mansfield*, in *Rust v. Cooper*, *ubi supra*.

Where a trader, the day after he stopped payment, and before he became bankrupt, sent a sum of money to a creditor, with a view to assist such creditor in his payments, the assignees were held entitled to recover the money in assumpsit, although the creditor was under acceptances for the accommodation of the bankrupt, for which the bankrupt had promised to provide. *Guthrie v. Copley*, 2 Car. & P. 301.

And it must be voluntary. Therefore, where goods sent to a trader were taken possession of by the vendor under a claim of right to stop them *in transitu* : and the trader, after taking legal advice, and consulting with his other creditors, was induced to give them up : these circumstances were holden to be evidence warranting the jury in finding that the trader gave up the goods *bona fide*, and not from any motive of voluntary or undue preference, though he was then in a situation of impending bankruptcy. *Dixon v. Baldwin*, 5 East, 175. So, if the transfer be made from an apprehension of being prosecuted for forgery, *De Tastet v. Carroll*, 1 Stark. 88. *Atkins & al. v. Seward & al.* *Manning's Index*. 62, pl. 181, or the like ; or under an apprehension of legal process for a debt, however groundless ; *Thompson v. Freeman*, 1 T. R. 155 ; or even through the importunity of the creditor, *Crosby v. Crouch*, 2 Camp. 166, 11 East, 256. *Yeates v. Groves*, 1 Ves. 280. *Smith v. Payne*, 6 T. R. 152. and see *Bayley v. Ballard*, 1 Camp. 416, but see *Davies & al v. Chippendale*, 2 B. & P. 282 (unless indeed the assignment be of all the trader's effects, *Thornton v. Hargreaves*, 7 East., 544) ; or if it take place under any other circumstances sufficient to overcome the free will of the debtor at the time ; the assignees will not be entitled to recover. And in these cases, it is immaterial whether the creditor's debt be payable at the time he procures the transfer, or not. *Hartshorn v. Slodden*, 2 B. and P. 582. *Crosby v. Crouch*, *ubi supra*.

In what has now been stated, we have supposed the assignment to transfer to have been made before any act of bank-

ruptcy committed by the debtor. But *à fortiori* in such an assignment or transfer void, if made after an act of bankruptcy ; see *Allanson v. Atkinson*, 1 M. & S. 583 ; or which is the same thing, if the property be sent by the debtor before, but not received by the creditor until after, an act of bankruptcy, for until the receipt and acceptance by the creditor, the act of the debtor is inchoate. *Alderson v. Temple*, 4 Bur. 2235, 1 W. Bl. 660. *Harman v. Fisher Cowp.* 117.

In what has been above stated, also, we have supposed the assignment or transfer to have been made to a creditor, in order to give him a preference, by paying or securing to him a previous debt. But where a trader, in insolvent circumstances, in consideration of a loan from his brother of £120 without interest, assigned to him by deed one-third part of all his effects, and in two days afterwards absconded, and was made bankrupt : the court held that, although it was a hard case upon the brother, the deed was void ; and said, “ if we should let this deed stand, we should tear up the whole bankrupt laws by the roots.” *Linton v. Bartlett*, 3 Wils. 47.

*Property of the bankrupt's wife.*] If a trader make a settlement on his intended wife and issue before marriage, it will be valid against his assignees if he afterwards become bankrupt ; even although he should have received no portion with his wife ; for marriage (as before observed, *ante*, p. 105) is a valuable consideration ; *Ex p. Cottrell, Cowp.* 742 ; and if a man, upon his marriage, settle personal property, for the separate use of his wife, to enable her to carry on a separate trade, his living with the wife will not give him such a possession, order, or disposition of the property, as to vest them in his assignees, upon his bankruptcy. *Haselington v. Gill*, 3 T. R. 620, *n. Jarman v. Woollotton*, 3 T. R. 618, and see *ante*, p. 143. But if the husband himself take any interest by the settlement, as an estate for life, or the like, it of course passes to the assignees. See *Tyrrel v. Hope*, 2 Atk. 558.

But a settlement made after marriage, will not prevent the property settled from vesting in the assignees of the husband on his bankruptcy, *Ex p. Bell*, 1 Glyn & J. 282. *Walker v. Burrows*, 1 Atk. 93, unless made in consideration of a portion or a new additional sum of money received with or in right of the wife, or of an agreement to pay the money, if it be afterwards paid, *Cook*. 293. and see *Glaister v. Hewer*, 8 Ves. 195, 9. Ves. 12, 11 Ves. 377, or unless it be made in pursuance of articles entered into before marriage, see *ante*, p. 105, or unless it were made, without fraud, before the husband entered into trade, and at a

ment, with reference to goods, has relation back to the act of bankruptcy. *See ante*, p. 121.

*The bankrupt's future property.*] The present statute vests in the assignees, not only the lands which the bankrupt has at the time of his bankruptcy, but also "all such lands, tenements, and hereditaments as he shall purchase, or shall descend, be devised, revert to, or come to such bankrupt, before he shall have obtained his certificate;" 6 Geo. 4. c. 16. § 64, *ante*, p. 124; and as to personal property, not only all such as he is possessed of at the time of his bankruptcy, but also "all property which he may purchase, or which may revert, descend, be devised or bequeathed, or come to him, before he shall have obtained his certificate." *Id.* § 63, *ante*, p. 132. Therefore a patent right for the exclusive exercise of an invention, obtained by an uncertificated bankrupt, was holden to vest in his assignees. *Hesse v. Stevenson*, 3 B. & P. 565. Even where the assignees of an uncertificated bankrupt, by agreement, for a valuable consideration paid to them by a third person, had left the bankrupt's furniture, &c. in his possession, but afterwards seized and disposed of it: it was holden that they might legally do so, as an uncertificated bankrupt is not entitled to retain any property against his assignees. *Nias v. Adamson*, 3 B. & A. 225. But an uncertificated bankrupt may maintain an action for his personal labour, performed after the issuing of the commission; *Chippendale v. Tomlinson*, Cook, 428. *Silk v. Osborn*, 1 Esp. 140; and he may maintain an action with relation to any after acquired property, *Webb v. Fox*, 7 T. R. 391. *Fowler v. Down*, 1 B. & P. 44. *Evans v. Brown*, 1 Esp. 170. *Laroche & al. v. Wakeman & ul. Peuk*, 140, or sue upon any contract made with him, *Cumming v. Roebuck*, Holt, 172. and see *Drayton v. Dale*, 3 D. & R. 534, 2 B. & C. 293, unless his assignees interfere. *Kitchen v. Bartsch*, 7 East, 53.

*Where situate.*] The locality of the property, which passes to assignees under a commission of bankrupt, is well defined by the present statute: namely, all lands, tenements, and hereditaments "in England, Scotland, Ireland, or in any of the dominions, plantations, or colonies belonging to his Majesty;" 6 Geo. 4. c. 16. § 64, *ante*, p. 124; estates tail "in England or Ireland;" *Id.* § 65. *ante*, p. 125; and personal estate "where-soever the same may be found or known." *Id.* § 63, *ante*, p. 132.

*Penalties and forfeitures under the statute.*] By stat. 6 Geo. 4. c. 16. § 100. all sums of money forfeited under this act, or by virtue of any conviction for perjury committed in any oath

hereby directed or authorized, may be sued for by the assignees in any of his Majesty's courts of record; and the money so recovered (the charges of suit being so deducted) shall be divided among the creditors.

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*Exceptions.*

*Property in the bankrupt's possession in autre droit.]* We have seen (*ante*, p. 137) that the property of others, in the bankrupt's possession, order, or disposition, with the consent of the owner, at the time of the bankruptcy, passes to the assignees. To this rule, however, there are the following exceptions.

1. Where the bankrupt has the possession of the property, as trustee for the owner, it does not pass to his assignees under the assignment. *Winch v. Keely*, 1 T. R. 619. *Joy v. Campbell*, 1 Sch. & Lef. 328. *Ex p. Martin*, 19 Ves. 491. *Copeman v. Gallant*, 1 P. Wms. 314. *Ex p. Gillett*, and *Ex p. Bacon*, 3 Mad. 28. And therefore it has been holden that a bankrupt, who had previously to his bankruptcy assigned a chose in action for a valuable consideration, might afterwards sue the debtor in his own name, for the benefit of the person to whom he assigned it; for after the assignment he was but a mere trustee for the assignee. *Winch v. Kelly*, 1 T. R. 619. *Carpenter v. Marnell*, 3 B. & P. 40. And where a lease was granted to a trader upon trust for another person, but the trust was not declared till after the trader had committed an act of bankruptcy, the lease did not pass to his assignees. *Gardner v. Rove*, 2 S. & S. 346. Where a trustee become bankrupt, the Lord Chancellor will, if necessary, appoint a receiver; *Langley v. Hawke*, 5 Mad. 46; for, by stat. 6 Geo. 4. c. 16. § 79, if any bankrupt shall as trustee be seized, possessed of, or entitled to, either alone or jointly, any real or personal estate, or any interest secured upon or arising out of the same, or shall have standing in his name as trustee, either alone or jointly, any government stock, funds, or annuities, or any of the stock of any public company, either in England, Scotland, or Ireland, it shall be lawful for the Lord Chancellor, on the petition of the person or persons entitled in possession to the receipt of the rents, issues, and profits, dividends, interest, or produce thereof, on due notice given to all other persons (if any) interested therein, to order the assignees, and all persons whose act or consent thereto is necessary, to convey, assign, or transfer the said estate, interest, stock, funds, or annuities to such person or persons as the Lord Chancellor shall think fit, upon the same trusts as the said estate, interest,

stock, funds, or annuities were subject to before the bankruptcy, or such of them as shall be then subsisting and capable of taking effect ; and also to receive and pay over the rents, issues, and profits, dividends, interest, or produce thereof, as the Lord Chancellor shall direct. Under this section the court made an order for the appointment of a new trustee. *Ex p. Saunders*, 2 G. & J. 132.

2. Monies or effects belonging to any friendly society, regulated according to stat. 33 Geo. 3. c. 54, or securities relating to the same, in the hands of any person appointed to an office by such society, who shall become bankrupt, do not pass to the assignees, but shall, within forty days after demand thereof made, be given up to such person as the society shall appoint to receive them, and the assignees shall pay out of the bankrupt's effects all money remaining due by him to the society, which he had received by virtue of his office. 33 Geo. 3. c. 54. § 10. *see the Act, and see Anon.* 6 Mad. 98. *Ex p. Ross*, 6 Ves. 802. *Ex p. Buckland*, Buck, 214. *Ex p. Stamford Friendly Society*, 15 Ves. 280.

3. Property in the possession of a bankrupt, as executor or administrator, does not pass to his assignees ; *Ex p. Ellis*, 1 Atk. 101. *Bennet v. Davis*, 2 P. Wms. 318. and *see Butter v. Richardson*, Amb. 74 ; not even money, if it can be specifically distinguished and ascertained to belong to the testator or intestate, and not to the bankrupt himself. *Per Ld. Mansfield*, 3 Bur. 1369. And the same, where the wife of a bankrupt is executrix or administratrix. *Viner v. Cadell*, 3. Esp. 88. *Ludlow v. Browning*, 11 Mad. 138. *Ex p. Marsh*, 1 Atk. 158. But if the husband or wife take a beneficial interest in the property, that interest will pass to the assignees. *Viner v. Cadell*, 3 Esq. 88. *Ex p. Ellis*, 1 Atk. 101. *Bedford v. Woodham*, 4 Ves. 40. And where a son, on the death of his mother, continued in the possession of her effects for twelve years, without taking out administration, or paying her debts, and then became bankrupt ; it was holden that the goods passed to his assignees, as being in his possession, order, and disposition ; and that a creditor of the mother, who afterwards took out administration, could not maintain trover against the assignees for them. *Fox v. Fisher & al.* 3 B. & A. 135. Where such property, however, does not pass to the assignees, but they take possession of it notwithstanding, the Lord Chancellor, upon application, will order it to be given up, will appoint if necessary a receiver for the receiving and securing of it, *Ex p. Ellis*, 1 Atk. 101. *Langley v. Hawke*, 5 Mad. 46, or if the bankrupt have applied it to his own use, will allow him to prove the amount upon his estate as a creditor. *Ante*, p. 108.

4. Property in the possession of a bankrupt, as factor for another, will not pass to his assignees; *Garret v. Culham*, *Bul. N. P.* 42. *Ex p. Chion*, 3 *P. Wms.* 187, *n. Godfrey v. Furzo*, *Id.* 186, *per Ld. King*. *Mace v. Cadell*. *Cowp.* 233, *per Ld. Mansfield*; or if sold, the owner may sue the vendee for the price, if he have not paid it to the bankrupt, *Escot v. Milward*. *Cook*, 383. *Scrimshire v. Alderton*, 2 *Str.* 1182, and see *Bul. N. P.* 130, or may recover it from the assignees, if they have received it from the vendee; *Ex p. Murray*, *Cook*, 384; but if the bankrupt have received the price, before any notice to the vendee not to pay it to him, (*see Cowp.* 255), the principal has no other remedy but to prove for the amount upon the estate, unless indeed the price remain in the hands of the factor, specifically distinguishable from the factor's own property. But bills obtained by the factor as security for the money produced by the sale of the goods, *Scott v. Surman*, *Willes*, 400, or goods purchased by the factor with the proceeds, *Whitecomb v. Jacob*, 1 *Salk.* 160, even without the privity or consent of the principal, *Taylor & al. v. Plumer*, 3 *M. & S.* 562, as long as they can be identified and distinguished from all other property, must be deemed the property of the principal, and will not pass to the assignees.

5. Property which has been placed in the hands of a trader, for a specific purpose, will not pass to his assignees upon his bankruptcy. When bills are placed in the hands of a banker they are either discounted with him, or entered short; if discounted, of course they pass to his assignees upon his bankruptcy; *Giles & al. v. Perkins & al.* 9 *East* 14, *per Ld. Ellenborough*. *Carstairs & al. v. Bates*, 3 *Camp.* 302; but if entered short (that is to say, lodged with the banker for the purpose of collection merely, and entered in his books accordingly, and not to the credit of the customer until paid), such of them as remain in specie in the banker's hands, *Giles & al. v. Perkins & al.* 9 *East*, 12. *Ex p. Rowton*, 1 *Rose*, 15. *Ex p. Smith*, *Buck*, 355, and not paid away, *Bolton v. Puller*, 1 *B. & P.* 539. *Ex p. Pease*, 1 *Rose*, 232, 19 *Ves.* 25, or are pledged by him with a third person, *Coslins, v. Martin*, 1 *B. & P.* 648, still belong to the customer, although indorsed by him, and will not pass to the assignees of the banker upon his bankruptcy. And even where a customer was in the habit of paying into his banker's hands bills not due, which, if approved, were immediately entered (as bills) to his credit to the full amount, and he was then at liberty to draw for that amount by check upon the bank; he was charged interest on all money paid for him, and allowed interest on the amount of the cash paid in by him, and of the bills lodged by him from the time the amount of them was re-



ceived ; and the bankers paid away these bills to their customers, as they thought fit : it was holden that such of the bills as remained in specie in the hands of the bankers, on their bankruptcy, still belonged to the customer, and that as the cash balance, independently of the bills, was in favour of the customer at the time of the bankruptcy, he might maintain trover for the bills against the assignees. *Thompson & al. v. Giles & al.* 2 B. & C. 422. So, if bills sent to a banker or other agent, (see *Ex p. Smith, Buck*, 355,) be appropriated to a particular purpose,—as for instance, if a man draw bills on a banker or agent, and send other bills to provide for the payment of them when due, *Zinck v. Walker*, 2 W. Bl. 1154. *Ex p. Dumas*, 1 Atk. 232, 1 Ves. 582. *Tooke v. Hollingworth*, 5 T. R. 215. *Ex p. Oursell, Amb.* 297, per *Ld. Hardwick*, and see *Ex p. Parr, Buck*, 191,—such of the bills, so sent, as remain in specie in the hands of the banker or agent at the time of his bankruptcy, will not pass to his assignees under the assignment, but still belong to the person who sent them. But where there is a mere exchange of bills for bills, *Hornblower & al. v. Proud & al.* 2 B. & A. 327. but see *Parke v. Eliason & al.* 1 East, 554, *semb. cont.* or where bills are sent by one trader to another on a general running account, *Bent v. Puller*, 5 T. R. 494, there the bills so exchanged or sent will pass to the assignees. Where a person, having agreed to lend a trader £200, to be applied to a specific purpose, drew a cheque upon his banker for that sum, and delivered it to him before any act of bankruptcy committed by him ; and the trader, after he had committed an act of bankruptcy, returned the cheque to the lender, not having made use of it : it was holden that the assignees of the trader could not maintain trover against the lender for the cheque. *Moor v. Barthrop*, 1 B. & C. 5. So where a trader, upon being arrested, borrowed £120 of his brother-in-law, for the purpose of settling with his creditors, but not being able to do so, he returned £95 of the money, and afterwards became bankrupt by lying in prison : it was holden that as the money was advanced for a special purpose, no property in it vested in the assignees, and that the bankrupt was therefore justified in returning it. *Toovey v. Milne*, 1 B. & A. 683. So, where an agent made a contract with government in his own name, but really for his principal, it was holden that timber placed in the hands of the agent by the principal, for the purposes of the contract, did not pass to the assignees of the agent upon his bankruptcy. *Collins v. Forbes*, 3 T. R. 316. So where a bankrupt was allowed by his assignees to remain in possession of his house and furniture, in order to assist in settling the affairs of the bankrupt estate ; and the bankrupt traded and became bankrupt a second time : it was

holden that the furniture, &c. still remained the property of the assignees under the first commission, and did not pass under the second assignment. *Walker v. Burnell*, Doug. 316. and see *Muller v. Moss*, 1 M. & S. 335.

6. And lastly, if money received by an overseer of the poor, or the like, be kept apart from his general property, his assignees, upon his bankruptcy, cannot claim it. *R. v. Eggington*, 1 T. R. 370.

*Conveyances, contracts, executions, &c. without notice.]* We have seen (*ante*, p. 123) that the property of a trader, upon his committing an act of bankruptcy, becomes from that moment the property of his assignees, if a commission of bankrupt be at any time afterwards sued out against him; and consequently all conveyances of it by him, and all contracts and other dealings and transactions by or with him respecting it, subsequent to an act of bankruptcy, were formerly wholly inoperative, although made for a valuable consideration, and although the party thus dealing with him had no knowledge whatever of an act of bankruptcy having taken place. If goods were consigned to a factor after a secret act of bankruptcy by the consigner, they might be recovered by the assignees, notwithstanding the factor had advanced money upon them; *Copland v. Stein*, 8 T. R. 199; although if they were consigned before an act of bankruptcy, the factor might sell them after the act of bankruptcy, and even retain the proceeds to answer his own debt. *Robson v. Kemp*, 4 Esp. 233. So, assignees might maintain trover for goods delivered by a bankrupt upon sale and return, after a secret act of bankruptcy. *Hurst v. Gwennap*, 2 Stark, 306. If a trader passed a bill of exchange to another, for a valuable consideration, before an act of bankruptcy, and forgot to indorse it, he might indorse it after the act of bankruptcy, *Smith v. Pickering & al.* Esp. N. P. 40. *Hawkins v. Penfold*, 2 Ves. 550. *Watkins v. Maule*, 2 Jac. & W. 237, or the Lord Chancellor upon application would make the assignees indorse it, see *Ex. p. Mowbray*, 1 Jac. & W. 428, or, where the bill is of a greater amount than the debt due to the holder from the bankrupt, would allow the holder to bring an action on it in the name of the assignees, upon giving them a sufficient indemnity, and undertaking to pay them the surplus; see *Ex. p. Brown & al.* 1 Glyn & J. 407; but a bankrupt's indorsement of a bill passed by him after an act of bankruptcy, would be of a nullity; even where one of several partners became bankrupt, and another partner afterwards possessed and indorsed a bill in the name of the firm, it was holden that the indorsement was void. *Ramsbottom & al. v. Lewis & al.* 1 Camp. 279. See *Ex. p. Stewart*,

1 *Glyn & J.* 344. If a trader conveyed his lands by bargain and sale before his bankruptcy, the deed might be enrolled after it. *Audley v. Halsey*, *W. Jon.* 203. If a trader, before his bankruptcy, assign goods at sea, and undertake to deliver and indorse the bill of lading as soon as he shall receive it, he may deliver and indorse it after an act of bankruptcy. *Lempriere v. Pasley*, 2 *T. R.* 485. So if a trader sell and regularly assign a ship at sea, before an act of bankruptcy, the indorsement on the certificate of registry, being merely an act of duty on the part of the vendor, and of itself passing no interest, may be made by the bankrupt himself, after the bankruptcy, *Dixon v. Ewart*, 3 *Merivale*, 322. See *Exp. Stewart*, 1 *Glyn & J.* 344. But in all these cases, if the sale of the lands, or the assignment of the goods or ship, were after an act of bankruptcy, it would formerly be void altogether.

Also, if a trader's property were seized in execution, after an act of bankruptcy committed by him, the sheriff would be liable, not indeed to an action of trespass, for the sheriff shall not in such a case be deemed a trespasser by relation, but to an action of trover, at the suit of the assignees; *Cooper v. Chitty*, 1 *Bur.* 20, 1 *W. Bl.* 65. *Blogg v. Phillips*, 2 *Camp.* 129; but if seized in execution before the act of bankruptcy, even although on the same day with it, (*Thomas v. Desanges*, 2 *B. & A.* 586. *Sadler v. Leigh*, 4 *Camp.* 197,) the seizure will be valid as against the assignees, and the property may be sold after the bankruptcy. See *ante*, p. 159.

Many inconveniences to trade having arisen from this relation of the assignees' title to the act of bankruptcy, dealing at all with a trader being rendered extremely hazardous on account of it, the law was altered in this respect, in some degree, by two of the repealed acts, (46 *Geo. 3.* c. 135. § 1 and 49 *Geo. 3.* c. 121. § 2.); and now, by stat. 6 *Geo. 4.* c. 16 § 81. all conveyances by, and all contracts and other dealings and transactions by and with, any bankrupt, *bond fide* made and entered into more than two calendar months before the date and issuing of the commission against him, and all executions and attachments against the lands and tenements or goods and chattels of such bankrupt, *bond fide* executed or levied more than two calendar months before the issuing of such commission, shall be valid, notwithstanding any prior act of bankruptcy by him committed; provided the person or persons so dealing with such bankrupt, or at whose suit or on whose account such execution or attachment shall have issued, had not at the time of such conveyance, contract, dealing, or transaction, or at the time of executing or levying such execution or attachment, notice of any prior act of bankruptcy by him committed: Pro-

vided also, that where a commission has been superseded, if any other commission shall issue against any person or persons comprised in such first commission, within two calendar months next after it shall have been superseded, no such conveyance, contract, dealing, or transaction, execution or attachment, shall be valid, unless made, entered into, executed, or levied more than two calendar months before the issuing the first commission.

Therefore where a bill of exchange was delivered by a bankrupt, with intent to transfer the property, more than two months before a commission issued, though not actually indorsed within the two months, it was holden to vest in the indorsee, and not in the assignees. *Anon.* 1 Camp. 432, *vide supra*.

But a release executed by the bankrupt, after an act of bankruptcy to a releesee knowing of the bankrupt's insolvency is invalid although executed more than two months before the suing out the commission. *Mavor v. Pyne*, 3 Bing. 285.

Purchases are of course within this act. And where a bankrupt's property was sold after an act of bankruptcy, but more than two months before the issuing of the commission, it was deemed a sale by the bankrupt, and not by the assignees; and therefore where a creditor of a trader purchased goods of his at a public auction, and refused to pay for them because the trader was indebted to him in a larger amount on a promissory note; the trader had committed an act of bankruptcy before the sale, but the commission did not issue for more than two months after it: in an action by the assignees against the creditor for the value of the goods, it was holden that he might set off the debt due to him from the bankrupt. *Southwood v. Taylor*, 1 B. & A. 471. And not only are purchases without notice of an act of bankruptcy previously committed, thus protected, but purchases made with a knowledge that the vendor had committed an act of bankruptcy, are also in some degree protected; for by stat. 6 Geo. 4. c. 16. § 86, no purchase from any bankrupt *bona fide* and for valuable consideration, where the purchaser had notice at the time of such purchase of an act of bankruptcy by such bankrupt committed, shall be impeached by reason thereof, unless the commission against such bankrupt shall have been sued out within twelve calendar months after such an act of bankruptcy. Where a trader effected an insurance on the life of B. and after an act of bankruptcy assigned the policy to J. S. who was aware of his circumstanceness at the time; on the death of B. it was ascertained that his life was not insurable; but the insurance company, upon a memorial being presented to them, ordered half the sum for which B.'s life had been insured to be paid as a gratuity, which J. S. received, and the policy was

thereupon given up to be cancelled ; in an action of trover by the assignees of the trader against J. S., to recover the value of the policy, it was holden that he was entitled merely to the parchment on which the policy was written, and not to the money received by J. S., that being a mere voluntary and gratuitous payment by the insurance company. *Wills v. Wells*, 8 Taunt. 264, 2 Moor, 247.

As to executions upon judgments entered upon warrants of attorney or cognovits, they are, by stat. 3 Geo. 4. c. 39, declared void as against the assignees under a commission of bankrupt against the defendant, unless such warrant of attorney or a copy thereof, or such cognovit respectively have been filed in the manner pointed out by the statute, within 21 days from the execution thereof, or unless judgment be signed and execution issued within the same time. *See the statute.*

Extents, we have seen (*ante*, p. 122.), may be executed upon the property of a bankrupt, if they be tested, or the fiats for them be granted, at any time before the actual execution of the assignment. But as to extents in aid, it is enacted, by stat. 6 Geo. 4. c. 16. § 71, that if any real or personal estate or debts of any bankrupt be extended after he shall have become bankrupt, by any person, under pretence of his being an accountant of or debtor to the king, the commissioners may examine upon oath, whether the said debt was due to such debtor or accountant, upon any contract originally made between such accountant and the bankrupt, and if such contract was originally made with any other person or persons, the commissioners may sell and dispose of such real and personal estate or debts for the benefit of the creditors under the commission, and such sale shall be valid against the said extent, and all persons claiming under it ; and any person to whom the said real and personal estate or debts shall be bargained, sold, granted, or assigned by the commissioners, shall have and may recover the same against any person who shall detain the same.

*Payments by or to the bankrupt, without notice.]* As the acts of a trader, after an act of bankruptcy committed by him, were considered in the same light as the acts of a stranger, a payment by him was deemed a wrongful appropriation of funds over which he no longer legally had a controul, and was recoverable by the assignees from the person to whom it was made ; and a payment to him was holden to be no satisfaction of a debt, being in law the same as a payment to a stranger.

This, being productive of great uncertainty and inconvenience, was in a great measure remedied by three of the repealed statutes, viz. 1 James 1. c. 15. s. 14., 19 Geo. 2. c. 32. s. 1., and

46 Geo. 3. c. 135. s. 1. ; and now, by stat. 6 Geo. 4. c. 16. s. 82, all payments really and *bonâ fide* made, or which shall hereafter be made by any bankrupt, or by any person on his behalf, before the date and issuing of the commission against such bankrupt, to any creditor of such bankrupt (such payment not being a fraudulent preference of such creditor), shall be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed ; and all payments really and *bonâ fide* made, or which shall hereafter be made, to any bankrupt before the date and issuing of the commission against such bankrupt, shall be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed ; and such creditor shall not be liable to refund the same to the assignees of such bankrupt : Provided the person so dealing with the said bankrupt had not, at the time of such payment by or to such bankrupt, notice of any act of bankruptcy by such bankrupt committed.

As this section, however, differs very materially from the sections on the same subject in the repealed acts, it would only create confusion were I to notice here the cases which have been decided upon the latter. The reader may see them collected in Mr. Selwyn's *Nisi Prius*, title " Bankrupt," sect. 5. and in any of the old works upon the bankrupt law ; and see *Bishop v. Crawshey*, 5 D. & R. 279, 3 B. & C. 415.

*Delivery of his goods, &c. to the bankrupt, without notice.]* As property of a trader in the hands of another person, immediately on the trader's committing an act of bankruptcy became the property of the assignees ; if the holder of it afterwards delivered it to the bankrupt, it was the same as if he had delivered it to a stranger, and the assignees had a right to recover the value of it from him, although he were ignorant, at the time he delivered the property, of any act of bankruptcy having been committed by the owner.

But now, by stat. 6 Geo. 4 c. 16. s. 84. no person or body corporate or public company, having in his or their possession or custody any money, goods, wares, merchandizes, or effects, belonging to any bankrupt, shall be endangered by reason of the payment or delivery thereof to the bankrupt or his order : provided such person or company had not, at the time of such delivery or payment, notice that such bankrupt had committed an act of bankruptcy.

A similar provision was contained in one of the repealed acts, namely stat. 56 Geo. 3. c. 137. s. 1.

*Notice, what.]* We have just enumerated the instances in

which transactions with a trader are deemed valid, notwithstanding a previous act of bankruptcy, if the party dealing &c. with him, had no notice at the time of his having committed an act of bankruptcy. Besides the ordinary evidence of the parties having a knowledge of the fact, either express, or to be implied from circumstances, it is enacted by stat. 6 Geo. 4. c. 16. s. 83., that the issuing of a commission shall be deemed notice of a prior act of bankruptcy (if an act of bankruptcy had been actually committed before the issuing the commission), if the adjudication of the person or persons against whom such commission has issued shall have been notified in the *London Gazette*, and the person or persons to be affected by such notice may reasonably be presumed to have seen the same. See *Warner v. Barber*, 8 Taunt. 176. There were clauses in two of the repealed acts (46 Geo. 3. c. 135. s. 3. and 49 Geo. 3. c. 121. s. 2.) upon this subject, but so different from the present, that it is unnecessary to give the cases that have been decided on them.

And by stat. 6 Geo. 4. c. 16. s. 85. if any accredited agent of any body corporate or public company shall have had notice of any act of bankruptcy, such body corporate or company shall be hereby deemed to have had such notice.

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### 3. *Concealment and Discovery of the Bankrupt's Property.*

By stat. 6 Geo. 4. c. 16. s. 120., any person wilfully concealing any real or personal estate of the bankrupt, and who shall not within forty-two days after the issuing of the commission discover such estate to one or more of the commissioners or assignees, shall forfeit the sum of one hundred pounds, and double the value of the estate so concealed; and any person who shall, after the time allowed to the bankrupt to surrender, voluntarily discover to one or more of the commissioners or assignees any part of such bankrupt's estate, not before come to the knowledge of the assignees, shall be allowed five *per centum* thereupon, and such further reward as the major part in value of the creditors present at any meeting called for that purpose shall think fit, to be paid out of the estate recovered on such discovery.

And if the bankrupt shall remove, conceal or embezzle any part of his estate, to the value of £10 or upwards, or any books of account, papers or writings relating thereto, with intent to defraud his creditors, he shall be deemed guilty of felony, and

punished with transportation for life or for not less than seven years, or with imprisonment or imprisonment and hard labour for not more than seven years. 6 Geo. 4. c. 16. s. 112. post.

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4. *How the property is to be disposed of.*

All the property of the bankrupt must be sold, either before the commissioners or by public auction, as the commissioners may think most advantageous; or the assignees may sell it by private contract, if that appear to be the most advantageous way of disposing of it. *Ex p. Dunman*, 2 Rose, 66. Any of the creditors who have proved under the commission may, by petition, compel the assignees to proceed to a sale, even although the assignees may fairly think that deferring it, or keeping the property instead of selling it, may be more advantageous to the creditors; *Ex p. Goreing*, Cook, 289. see 6 Ves. 622; but creditors cannot prevent assignees from selling, although they may be proceeding to a sale in a manner apparently objectionable, and open to suspicion; for the assignees act at their own risk and upon their own responsibility, and they, and not the Court, are the judges of the propriety and expediency of the sale. *Ex p. Montgomery & al.* 1 Glyn & J. 338.

The sale should be advertised, or other sufficient notice should be given of it. See *Ex p. Montgomery*, *supra*. It is not liable to auction duty. 6 Geo. 4. c. 16. s. 98. *ante*, p. 18, 19.

Neither the assignees, *Ex p. Hodgson*, 1 Glyn & J. 12. *Ex p. —*, in *re Salisbury*, Buck, 245, nor the commissioners, *Ex p. Bennett*, 10 Ves. 381. *Ex p. Harrison*, Buck, 17. *ante*, p. 8, nor the solicitor to the commission, *Ex p. Bennett*, 10 Ves. 381. *Ex p. James*, 8 Ves. 337. *ante*, p. 15, nor even the auctioneer employed to sell, *Ex p. Lewis*, Cook, 289, shall bid at the sale, either for themselves or on behalf of others, without first obtaining the consent of the creditors, and petitioning for leave, to do so, otherwise the Lord Chancellor, upon application, will set aside the sale, and order a resale; and the petition in such a case must be served on his assignees and the bankrupt. *Ex p. Page*, 4 Mad. 459. Even where an assignee bought in two lots of the bankrupt's real property, without the consent of the creditors, and upon a resale there was a loss upon one lot, and a gain on the other, but the balance was in favour of the bankrupt's estate, the assignee was charged with the loss on the lot that was undersold. *Ex p. Lewis*, 1 Glyn & J. 69. And see *Ex p. Buxton & al.* *Id.* 355. Where the creditors, at a meeting



convened for the purpose by advertisement, proposed to one of the assignees to purchase the bankrupt's effects, at a valuation which had been made of them, yet the court refused to sanction this, without first referring it to the commissioners to ascertain whether the property could be more advantageously disposed of. *Ex p. Serle*, 1 *Glyn & J.* 187.

In the sale of an office, the course is, for the assignees first to agree for the price with the party wishing to purchase it, and get him approved of by the person having the appointment; and then the bankrupt may, if necessary, be compelled by an order of the court to surrender the office, and the purchaser will thereupon be appointed to it. *Ex p. Butler*, 1 *Atk.* 210. 215, *Amb.* 73. *Ex p. Joynes*, *Cook*, 316.

In general the assignees, as all other vendors, are bound to make out a good title to the bankrupt's lands, before they can compel a vendee to complete his purchase. *Macdonald v. Hanson*, 12 *Ves.* 277. *White v. Foljambe*, 11 *Ves.* 343. See *Bartlett v. Tuchin*, 6 *Taunt.* 259, 1 *Marsh.* 583. But where the assignees put up for sale the bankrupt's interest in an estate "as he lately held the same, an abstract of which may be seen at the office of Messrs. I. & Co;" it was holden that the vendee could not insist upon any other title than such as the bankrupt had; *Freme v. Wright*, 4 *Mad.* 394; and the same in all cases, where the vendee wishes to compel the assignees to a specific performance. *Pope v. Simpson*, 5 *Ves.* 145. Where title deeds cannot be delivered, the assignees, like any other vendor, must give attested copies of them, at the expense of the estate; but their covenant for the production of the deeds should in prudence be confined to the period of their continuance as assignees. *Ex p. Stuart*, 2 *Rose*, 215.

Formerly the bankrupt could not be compelled to join with his assignees in the conveyance of his property to purchasers. See *Ex p. Blakes*, 1 *Cox*, 398. *Selkrig v. Davis*, 2 *Rose*, 291. But now, by stat. 6 Geo. 4. c. 16. § 78, it shall be lawful for the Lord Chancellor, upon the petition of the assignees, or of any purchaser from them of any part of the bankrupt's estate, (if such bankrupt shall not try the validity of the commission, or if there shall have been a verdict at law establishing its validity,) to order the bankrupt to join in any conveyance of such estate or any part thereof; and if he shall not execute such conveyance within the time directed by the order, such bankrupt and all persons claiming under him shall be stopped from objecting to the validity of such conveyance; and all estate, right, or title which such bankrupt had therein, shall be as effectually barred by such order, as if such conveyance had been executed by him.

And by stat. 6 Geo. 4. c. 16. § 87, no title to any real or personal estate, sold under any commission, or under any order in bankruptcy, shall be impeached by the bankrupt, or any person claiming under him, in respect of any defect in the suing out of the commission, or in any of the proceedings under the same, unless the bankrupt shall have commenced proceedings to supersede the said commission, and duly prosecuted the same, within twelve calendar months from the issuing thereof.

The vendee may be compelled to complete his purchase, by petition. *Semb. Ex p. Gould*, 1 Glyn & J. 231.

The produce of the sale must be paid into the hands of the bankers appointed by the creditors; *see ante*, p. 119 : and the surplus, if any, after payment of all the debts proved under the commission, and interest upon such of them as legally bear interest, *Ex p. Koch*, 1 Rose, 317, 1 V. & B. 342. *Ex p. Williams*, 1 Rose, 399. *Ex p. Morris*, 1 Ves. 132, must be paid to the bankrupt, or to his heir or personal representative if he be dead. *See Banks & al. v. Scott & al.* 5 Mad. 493.

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## SECTION X.

### *The Bankrupt's Surrender.*

*When.*] The bankrupt may attend and surrender himself at the private meeting, in order to obtain his protection; *Ex p. Wood*. 1 Rose, 46, 18 Ves. 1; in prudence, perhaps, he ought to surrender himself at the first public meeting, and attend the subsequent meetings, for the purpose of affording what assistance he can in preventing persons not legally authorised from proving under the commission; but he is not liable to any penalty, unless he fail to attend at the third public meeting.

By stat. 6 Geo. 4. c. 16. § 112, if any person, against whom any commission has been issued or shall hereafter be issued, whereupon such person hath been or shall be declared bankrupt, shall not, before three of the clock upon the forty-second day after notice thereof in writing to be left at the usual place of abode of such person, or personal notice in case such person be then in prison, and notice given in the London Gazette, of the issuing of the commission and of the meeting of the commissioners, surrender himself to them, and sign or subscribe such surrender, and submit to be examined before them from time to time upon oath, or, being a quaker, upon solemn affirmation :

every such bankrupt shall be deemed guilty of felony, and be liable to be transported for life, or for such term (not less than seven years) as the court before whom he shall be convicted shall adjudge, or shall be liable to be imprisoned only, or imprisoned and kept to hard labour, in any common gaol, penitentiary house, or house of correction, for any term not exceeding seven years. *See this section, post, p.*

There was nearly the same enactment in stat. 5 Geo. 2. c. 30. § 1, amended by 1 Geo. 4. c. 115. s. 1, excepting that the bankrupt had the entire of the forty-second day to surrender; and proclamation must have been made, requiring him to do so, before he incurred the penalty of the statute. The proclamation is now unnecessary: all that is required is the notice or summons to the bankrupt, (*see the form, ii. p. 23,*) and the advertisement in the Gazette (*see the form, ii. p. 25.*); and the bankrupt must now surrender himself to the commissioners before 3 o'clock in the afternoon of the forty-second day. *See the form of the Memorandum of surrender, ii. p. 27; and of the Memorandum that the bankrupt has not surrendered, ii. p. 84, 26.*

*Time, how enlarged.]* By stat. 6 Geo. 4. c. 16. § 113, the Lord Chancellor shall have power, as often as he shall think fit, from time to time, to enlarge the time for the bankrupt surrendering himself, for such time as the Lord Chancellor shall think fit, so as every such order be made six days at least before the day on which such bankrupt was to surrender himself.

And the court will thus enlarge the time, where the bankrupt's not having duly surrendered has arisen from unavoidable necessity, *see Anon. 15 Ves. 1*, or from accident, *see Ex p. Dawson, Cox, 48*, or from his being abroad or absent at the time, *Fuller's case, 10 Ves. 183. and see Anon. 15 Ves. 1*, or from the commissioners not attending on the 42d day, *Ex p. Grey, 1 Ves. 195*, or from any innocent default of the bankrupt, *Ex p. Higginson, 12 Ves. 496. Ex p. Shiles, 2 Rose, 381, 1 Mad. 241*, or the like, even although the assignees should object to it; *Ex p. Shiles, supra*; but not, in general, where the bankrupt has absented himself purposely, *Ex p. White, 2 Bro. 47. Ex p. Rodgers, Amb. 307. Ex p. Grey, 1 Ves, 195*, except under special circumstances. *See Ex p. Berryman, 1 Glyn & J. 223.*

The application is by petition, either by the bankrupt himself or by the assignees, stating the commission and adjudication shortly, and the summons, and then the facts of the case, and praying that the time for his surrender and examination should be enlarged to a day named, and that the commissioners be directed to call a meeting for the purpose of taking his surrender

and examination. If the application be by the bankrupt, he will have to pay the costs. *Ex p. Carter*, 4 *Mad.* 394.

The order is not mandatory upon the bankrupt; nor will he be guilty of any contempt by not surrendering at the time thus given him. *Ex p. Johnson*, 14 *Ves.* 40. *Ex p. Jackson*, 15 *Ves.* 119. On the other hand, it seems, it does not relieve him from his liability to be prosecuted for his not surrendering within the 42 days; see *Ex p. White*, 2 *Bro.* 47; it merely indicates the Chancellor's opinion in favour of the bankrupt, which indeed may have the effect of preventing such a prosecution, as the Chancellor has it in his power to render such a prosecution ineffective by superseding the commission. See *Ex p. Ricketts*, 6 *Ves.* 445, 1 *Atk.* 222. and see *Ex p. Wood*, 1 *Atk.* 221. *Ex p. Lavender*, 1 *Ross*, 55.

Upon the production of the order to the commissioners, a memorandum of it is filed among the proceedings (see the form, ii. p. 82), and a meeting is called accordingly. See the form of the Advertisement, ii. p. 83.

*How surrendered, if in custody.]* By stat. 6 Geo. 4. c. 16. § 119, whenever any bankrupt is in prison, or in custody under any process, attachment, execution, commitment or sentence, the commissioners may, by warrant under their hands, directed to the person in whose custody such bankrupt is confined, cause such bankrupt to be brought before them, at any meeting either public or private; and if any such bankrupt is desirous to surrender, he shall be so brought up, and the expense thereof shall be paid out of his estate, and such person shall be indemnified by the warrant of the commissioners for bringing up such bankrupt. See the remainder of this section, post, p. 185. See the form of the Warrant, ii. p. 79.

And by stat. 6 Geo. 4. c. 16. § 115, if any bankrupt apprehended by any warrant of the commissioners (see 6 Geo. 4. c. 16. § 36, in the next section) shall, within the time hereby allowed for him to surrender, submit to be examined, and in all things conform, he shall have the same benefit as if he had voluntarily surrendered.

*His privilege from arrest.]* By stat. 6 Geo. 4. c. 16. § 117, the bankrupt shall be free from arrest and imprisonment by any creditor in coming to surrender, and after such surrender during the said forty-two days, and such further time as shall be allowed him for finishing his examination, provided he was not in custody at the time of such surrender; and if such bankrupt shall be arrested for debt, or on any escape warrant, in coming to surrender, or shall after his surrender be so arrested within the time

aforesaid, he shall, on producing the summons under the hands of the commissioners to the officer who shall arrest him, and giving such officer a copy thereof, be immediately discharged; and if any such officer shall detain any such bankrupt after he shall have shown such summons to him, so signed as aforesaid, such officer shall forfeit to such bankrupt, for his own use, the sum of five pounds for every day he shall detain such bankrupt, to be recovered by action of debt in any court of record at Westminster, in the name of such bankrupt, with full costs of suit.

This is the same as a section in one of the repealed acts, namely, 5 Geo. 2. c. 30. § 5. It extends to all arrests by creditors, whether for debts proveable under the commission, or not, *Darby v. Vaughan*, 5 T. R. 209, to arrests under attachments for the nonpayment of money, *Re M'Williams*, 1 Sch. & Lef. 169. *Ex p. Parker*, 3 Ves. 554, and to even arrests under extents at the suit of the crown. *Ex p. Russell*, 1 Rose, 278, 19 Ves. 163. *Ex p. Temple*, 2 Rose, 22, 2 V. & B. 391. But it does not extend to a taking of the principal by his bail; for the bail are not creditors, and besides in contemplation of law he was in their custody from the moment they became bail. *Ex p. Gibbons*, 1 Atk. 238. and see 1 Arch. Pr. B. R. 49. see *Ex p. Leigh*, 1 Glyn & J. 264. Nor does it extend to a retaking of a prisoner for an escape, by the marshal of the King's Bench prison, without an escape warrant; what is said of a taking upon an escape warrant, in the statute, relating to a retaking by a creditor. *Anderson v. Hampton*, 1 B. & A. 308. and see *Ex p. Johnson*, 14 Ves. 36.

And where a bankrupt is entitled to his discharge upon an arrest, he will be discharged also from all detainers lodged against him after it took place; *Ex p. Hawkins*, 4 Ves. 691. *Ex p. Ross*, 1 Rose 260; but if in custody at the time he surrenders, it is otherwise. *Ex p. Goldie*, 2 Rose, 343, 1 Merivale, 176.

The act gives the bankrupt this privilege from arrest whilst coming to surrender: and where a bankrupt, upon receiving the commissioners' summons, delivered up his keys and effects to the messenger, and promised to submit to the directions of the act, but was arrested at his house on the first day appointed for the surrender, the Lord Chancellor upon petition discharged him. *Ex p. De Fries, Davies*, 163. So, where on his way to surrender he had deviated from the direct road, and was arrested during that deviation, still he was holden entitled to his privilege. *Ogle's case*, 11 Ves. 556. But where the bankrupt came from Holland within the 42 days, intending to surrender on the 42d day, but finding the time had been enlarged, he deferred surrendering until the expiration of the enlarged time, and in the mean time was arrested: the court refused to discharge him, saying that the privilege in this case, like that of witnesses at-

tending a court, must be confined to a reasonable time *eundo et redeundo*, and must not be extended beyond it. *Kenyon v. Solomon*, *Cowp.* 156.

The privilege also continues during the whole of the 42d day, although the bankrupt may have passed his examination at an early hour on that day ; *Ex p. Donlevey*, 7 *Ves.* 317 ; and in the same manner it continues to the end of the day to which the examination is adjourned, if adjourned to a specific day : *Simpson's case*, *Buck*, 424. and see *Davies v. Trotter*, 8 *T. R.* 476 ; but if adjourned *sine die*, see *Claughton v. Leigh*, 2 *D. & R.* 831, 1. *B. & C.* 652. *Ex p. Woods* 1 *Glyn & J.* 75, then it continues for such time only, not exceeding three calendar months, as the commissioners by indorsement on their summons shall appoint, 6 *Geo.* 4. c. 16. § 118 *post p.* 167, or whilst the party is actually in attendance on the commissioners, or going or returning from the meeting. *Ex p. Ross*, 1 *Rose*, 260. So, if after the expiration of the 42 days the bankrupt obtain an order to enlarge the time for surrendering, he enjoys no privilege from arrest during the enlarged time, *Anon.* 15. *Ves.* 1, unless whilst in actual attendance at, or in going to or returning from the meeting. *Ex p. Hawkins*, 4 *Ves.* 691.

And the bankrupt derives this privilege from the statute, and not from the commissioners' certificate indorsed upon his summons. *Ex p. Leigh*, 1 *Glyn & J.* 264. And therefore where the commissioners adjourned the bankrupt's last examination, the bankrupt was holden to be privileged from arrest in the mean time, although the commissioners had neglected to indorse the adjournment upon his summons. *Price's case*, 3 *V. & B.* 23.

In order to obtain his discharge, when privileged, the bankrupt must petition to the Lord Chancellor ; *Anon.* 1 *Rose*, 230. see *Ex p. Byne*, 1 *V. & B.* 316. ; the order is made upon the plaintiff in the first instance, *Anon.* 15 *Ves.* 1, and if he disobey it, it is then extended to the officer ; *Ex p. Byne*, 1 *V. & B.* 316 ; and disobedience of it is punishable as a contempt. *Ex p. Kerney*, 1 *Atk.* 155. *Ex p. King*, 7 *Ves.* 312. *Ex p. Dixon*, 8 *Ves.* 104.

But besides the privilege given by the statute, the bankrupt also enjoys at common law the same privilege that parties and witnesses, &c. do in all other cases. And therefore where a bankrupt was arrested as he was returning from the hearing of his petition for leave to surrender, he was holden to be privileged and was discharged. *Ex p. Jackson*, 15 *Ves.* 116. So where a bankrupt was attending a meeting of the commissioners to declare a dividend, several years after his final examination, being directed verbally by the commissioners to do so, he was holden to be privileged *eundo, morando et redeundo*. *Arding v. Flower*, 3 *Esp.* 117, 8 *T. R.* 534.

*Allowance to the bankrupt until his examination.]* By stat. 6 *Geo.*

4. c. 16. § 114, it shall be lawful for the commissioners, before the choice of assignees,—and after such choice, for the assignees, with the approbation of the commissioners, testified in writing under their hands,—from time to time to make such allowance to the bankrupt out of his estate, until he shall have passed his last examination, as shall be necessary for the support of himself and his family.

## SECTION XI.

### *The Bankrupt's Examination.*

*The Summons. &c.]* By stat. 6 Geo. 4. c. 15. § 36, it shall be lawful for the commissioners, by writing under their hands, to summon any bankrupt before them, whether such bankrupt shall have obtained his certificate or not; and in case he shall not come at the time by them appointed (having no lawful impediment made known to them at such time, and allowed by them,) it shall be lawful for the said commissioners, by warrant under their hands and seals, to authorize and direct any person or persons they shall think fit, to apprehend and arrest such bankrupt, and bring him before them.

The usual summons is issued at the private meeting; *see ante* p. 71, and *see the form*, ii. p. 23, and it is either served upon him personally, or left for him at his usual place of abode. *See* 6 Geo. 4. c. 16. § 112, *ante* p. 179. But by this section the commissioners may summon him at any time, even after his last examination; and where a bankrupt, after being summoned in the usual way, and before the 42d day, was removing and embezzling his effects and conveying away his lands, the commissioners issued their summons for his attendance at an earlier period, and, upon his disobeying it, he was committed to Newgate: the commitment was holden to be legal. *Ex p. Lingood*, 1 Atk. 240. *Ex p. Hunt*, 2 Jac. & W. 560, S. P.

The usual summons must be considered as giving the bankrupt the option of appearing before the commissioners on any one of the three days therein mentioned; so that upon his failing to appear on the two first days, the commissioners, I should think, would not issue their warrant as directed by the above section; if they required his attendance before the third day, they would issue a fresh summons to that effect. *See the form of the Summons*, ii. p. 86; *of the Deposition of the Service of the Summons*, ii. p. 88; *of the Memorandum of his non-attendance*, ii. p. 89; and *of the Warrant to apprehend him*, ii. p. 90.

The above section, of course, relates only to bankrupts who

are not in custody ; but by stat. 6 Geo. 4. c. 16. § 119, whenever any bankrupt is in prison, or in custody, under any process, attachment, execution, commitment, or sentence, the commissioners may, by warrant under their hands, directed to the person in whose custody such bankrupt is confined, cause such bankrupt to be brought before them at any meeting, either public or private, and if any such bankrupt is desirous to surrender, he shall be so brought up, and the expense thereof shall be paid out of his estate ; and such person shall be indemnified by the warrant of the commissioners for bringing up such bankrupt : Provided that the assignees may appoint any persons to attend such bankrupt from time to time, and to produce to him his books, papers, and writings, in order to prepare an abstract of his accounts, and a statement to shew the particulars of his estate and effects, previous to his final examination and discovery thereof ; a copy of which abstract and statement the said bankrupt shall deliver to them ten days at least before his last examination. *See the form of the Warrant*, ii. p. 80, 87.

We have already seen, in the last section, that if the bankrupt shall not, before three o'clock on the forty second day, surrender himself to the commissioners, and sign to subscribe such surrender, and submit to be examined before them from time to time, upon oath, he will be guilty of felony. *See 6 Geo. 4. c. 16. § 112, ante, p. 179.*

*Examination and Commitment.*] The examination of the bankrupt usually takes place on the forty-second day ; it may take place before that period, if the bankrupt have been summoned for that purpose ; *supra* ; or if the bankrupt have surrendered on or before the forty-second day, or such further day as may have been appointed for that purpose by the order of the court, the commissioners may enlarge the time for his examination, if they see occasion to do so, *Davis v. Trotter*, 8 T. R. 476, *R. v. Perrot*, 2 Bur. 1124. *Ex p. Hawkins*, 4 Ves. 691, and the bankrupt must attend to be examined at such enlarged time ; or if the bankrupt have not surrendered, we have already seen that the time for the surrender, and of course for the bankrupt's examination, may in some cases be enlarged, upon application by petition to the Lord Chancellor. *See ante, p. 180, and see Ex p. Dayrie*, 1 Glyn & J. 281. And by stat. 6 Geo. 4. c. 16. § 118. it shall be lawful for the commissioners, at the time appointed for the last examination of the bankrupt, or any enlargement or adjournment thereof, to adjourn such examination *sine die*, and he shall be free from arrest or imprisonment for such time, not exceeding three calendar months, as they shall, by indorsement upon such summons as aforesaid, appoint, with like penalty upon



any officer detaining such bankrupt after having been shewn such summons. This is usually done, where the answers of the bankrupt are so unsatisfactory that the commissioners do not feel themselves justified in passing his examination, and yet perhaps not sufficiently so to justify them in committing him. *Cook*, 431, *and see post*.

By stat. 6 Geo. 4. c. 16. § 39. after giving authority to the commissioners to summon the bankrupt, and to issue their warrant in case of his non-appearance upon the summons, as above mentioned, it is enacted that upon the appearance of such bankrupt, or if such bankrupt be present at any meeting of the said commissioners, it shall be lawful for them to examine such bankrupt upon oath, either by word of mouth, or on interrogatories in writing, touching all matters relating either to his trade, dealings, or estate, or which may tend to disclose any secret grant, conveyance and concealment of his lands, tenements, goods, money, or debts, and to reduce his answers into writing, which examination so reduced into writing, the said bankrupt shall sign and subscribe. And the bankrupt must answer the questions put to him although the answers may subject him to penalties as for smuggling or the like, *Ex p. Meymott*, 1 *Atk.* 200. *Ex p. Barr*, *Cook*, 437, or may tend to establish an act of bankruptcy. *Pratt's case*, 1 *Glyn. & J.* 58. He is not indeed obliged to answer a question that has a tendency to accuse him of a criminal act; yet even in this case he refuses at his peril; for if by such refusal any of his property be unaccounted for, the commissioners may commit him for refusing to answer, or answering unsatisfactorily, as shall be stated presently. *Ex p. Oliver*, 1 *Rose*, 407, 2 *V. & B.* 244. And it may be right to mention here, and upon several occasions where applications have been made to the Lord Chancellor to limit or restrain the commissioners in their examinations, they have been almost uniformly refused. *See Ex p. Bland*, 1 *Atk.* 205. *Ex p. Chater*, *Buck.* 290. *Ex p. Parsons*, 1 *Atk.* 204. *Ex p. Burlton*, 1 *Glyn & J.* 30. *Ex p. Cridland*, 3 *V. & B.* 94. If he swear falsely, he may be indicted for perjury. *See* 6 Geo. 4. c. 16. § 99. *ante*, p. 17.

And by the same section, (6 Geo. 4 c. 16. § 36), if such bankrupt shall refuse to be sworn, or shall refuse to answer any questions put to him by the said commissioners touching any of the matters aforesaid (*vide supra*), or shall not fully answer to the satisfaction of the said commissioners any such questions, or shall refuse to sign and subscribe his examination so reduced into writing as aforesaid (not having any lawful objection allowed by the said commissioner), it shall be lawful for the said commissioners, by warrant under their hands and seals, to commit him to such prison as they shall think fit, there to remain

without bail until he shall submit himself to the said commissioners to be sworn, and full answers make to their satisfaction to such questions as shall be put to him, and sign and subscribe such examination.

This section very fully defines the four cases, in which a bankrupt may be committed by the commissioners, upon his examination: namely, 1. If he refuses to be sworn; 2. If he refuse to answer any question put to him by the commissioners touching any matter "relating either to his trade, dealings, or estate, or which may tend to disclose any secret grant, conveyance or concealment of his lands, tenements, goods, money, or debts; 3. If he do not fully answer such questions to the satisfaction of the commissioners; and 4. If he refuse to sign and subscribe his examination. They cannot commit him for prevarication; *R. v. Nathan*, 2 *Str.* 880; or for misbehaviour merely; *Miller v. Seare & al.* 2 *W. Bl.* 1141; or for any other act or omission not comprised in the statute.

Where a bankrupt, on the day appointed for his last examination, promised to produce a balance sheet, if further time were given; several adjournments took place, during a period of ten months, at which adjournments he represented an account in writing to be necessary, in order to make the discovery required of his estate and effects, and he promised from time to time to produce the balance sheet; and that not being produced at the last adjournment, and no satisfactory reason given by him for not producing it, excepting merely his assertion that he had not committed an act of bankruptcy, and that therefore the commissioners had no authority to examine him, the commissioners committed him: it was holden that they were justified in doing so, his conduct amounting to a refusal to answer a question put to him by the commissioners touching a matter relating to his estate. *Davie v. Mitford & al.* 4 *B. & A.* 356. So, where the last examination of a bankrupt was repeatedly adjourned, in order that he might produce a written account, which he referred to as the only mode of explaining his trade and dealings; and the last adjournment was made upon his assurance that he would produce such account if further time were given: it was holden that, as the account was not produced, nor any satisfactory reason assigned for not having produced it, on the day to which the adjournment was made, the commissioners were justified in committing him. *Stanley Goddard's case*, 1 *Glyn & J.* 45.

As to the not fully answering questions to the satisfaction of the commissioners: There are no technical rules by which cases of this kind are determined; the question in each particular case is, whether the answers given by the bankrupt be or be

not sufficient to satisfy the mind of any reasonable person. *Per Lord Kenyon in Ex p. Nowlan*, 6 T. R. 118. *Per Lord Eldon in Goddard's case, supra*. If a bankrupt swear to an account of the disposal of his property, which appears incredible, it is unsatisfactory within the meaning of the statute, and the commissioners may commit him. *Ex p. Nowlan*, 6 T. R. 118. *Per Lord Eldon in Ex p. Oliver*, 2 V. & B. 244, 1 Rose, 407. and see *Langhorne's case*, 2 W. Bl. 919. Where a bankrupt, upon his examination, being asked to account for a deficiency in his estate of £13,513, said that he had lost upwards of £2,000 on goods sold, and upwards of £1,000 by mournings, and that for the last nine or ten years, he was sorry to say, he had been extremely extravagant, and spent large sums of money: this was holden to be unsatisfactory, and that the commissioners had rightly committed him. *R. v. Perrot*, 2 Bur. 1122. Afterwards he gave as a further answer, that he had given to a woman whom he had kept, and whose name he mentioned, but who was since dead, the sum of £5,000 in one year; that he drew this money, not from his banker, but from one Thompson who sold goods for him, and who also was since dead: it was holden that this answer also was incomplete and unsatisfactory, and he was again remanded. *Id.* 2 Bur. 1215. So, where a bankrupt, in accounting for a deficiency in his estate, said that he had paid £400 in order to prevent a discovery of a connexion he had had with another man's wife; that he paid it to a man who had threatened to disclose the affair, but that he did not know the man's name, or where he lived; that he received notes from him threatening such disclosure unless he gave him money, but he had destroyed the notes; that he had received the notes by the hands of a boy, but that he did not know the boy: these answers were not deemed satisfactory enough by the Lord Chancellor, as to induce him to discharge the bankrupt, whom the commissioners had committed; but he recommended them to have the bankrupt again called before them, for the purpose of asking him further questions which he suggested. *Ex p. Oliver*, 2 V. & B. 244, 1 Rose, 407. But where a bankrupt, to a question whether he had not executed two conveyances of his estate and effects, or a part thereof, to his son, within six months previous to the commission, answered, "Not to my knowledge," and no further question was asked: this was holden to be satisfactory. *Norris's case*, 2 Jac. & W. 437. So, where a bankrupt, being asked if he had bought certain silks by a broker, answered that he could not positively recollect whether he had or not; and being pressed again with the question, answered that he should rather believe he had: these answers were holden to be satisfactory. *Miller's case*,

3 *Wils.* 427, 2 *W. Bl.* 881. So, where the bankrupt was directed by the commissioners to communicate to his assignee where certain debtors to his estate were to be found, he was afterwards asked, upon his examination, if he had given his assignee any such information, and if not, why not; to which he answered "I have not, and can give no reason why;" and he was thereupon committed: it was holden that he should not have been committed; for the commissioners can only commit for not giving a satisfactory answer to a question put by themselves, and not to questions, however relevant and material, put by any other person delegated by them. *Ex p. Cassidy*, 2 *Rose*, 217.

*Warrant.*] If the bankrupt refuse to be sworn, or refuse to answer, or answer unsatisfactorily, or refuse to sign his deposition, as above stated, the commissioners may commit him to such prison as they shall think fit, in London usually to Newgate, in the country to the county or borough gaol.

The commitment must be under the hands and seals of the major part of the commissioners, and is directed to the messenger, and also to the keeper of the gaol and "his deputy there." It states the issuing of the commission, the taking of the oath by the commissioners, the adjudication, the notice in the *Gazette*, the surrender of the bankrupt and the several adjournments of his examination, and then his last attendance for the purpose of passing his examination; it then states either that he refused to be sworn,—or that he was sworn, and states the questions put to him, and alleges either that he refused to give any answer, or "any other than the following answer, that is to say," and then setting out the answer, and alleging it not to be satisfactory to the commissioners; and it then concludes with ordering the messenger to take him into custody, and convey him to the prison, and ordering the gaoler to receive him, and to keep and detain him safely "without bail, until he shall submit himself to us the said commissioners or to the major part of the commissioners by the said commission named and authorised, [to be sworn,] and full answers make to our or their satisfaction to the questions so put to him by us as aforesaid, [and sign and subscribe such his examination]." See the *stat.* § 36, *ante*, p. 186. Where it was, "till he conform to our authority," it was holden bad. *Bracey's case*, 1 *Salk.* 348, 1 *L. Raym.* 99. Where the warrant concluded, "or otherwise be discharged by due course of law," it was holden bad. *Hollingshead case*, 1 *Salk.* 351, 2 *L. Raym.* 851. Even a commitment, till he should "full answer make to all such questions as shall be put to him as aforesaid," was holden bad, *Miller's case*, 2

*W. Bl. 882, per Blackstone, J. and see Id. 1141, 1144*, although these were the general words in the statute ; for these words in the conclusion of the warrant, must be narrowed so as to have direct reference to the offence imputed to the bankrupt in the preceding part. But when the commitment was for refusing to be sworn, there the words “ until such time as he shall submit himself to us, or to the major part of the said commissioners by the said commission named and authorised, and take the oath prescribed by law for that purpose, and full answer make, to our or their satisfaction, to the questions which may be put to him by virtue of the said commission,” were holden sufficient. *Nobes v. Mountain & al.* 3 B. & B. 233, 7 Moor, 39.

By stat. 6 Geo. 4. c. 16. § 39, if any person be committed by the commissioners for refusing to answer or for not fully answering any question put to him by the said commissioners, they shall issue a warrant of commitment specifying every such question. And not only the question to which an unsatisfactory answer is given, must be set out, but if the answer appears unsatisfactory only by reference to some other part of the examination, that part should also be stated ; *Walker's case*, 1 Glyn & J. 371 ; it is not sufficient for the commissioners to set out the answer complained of, and the question to which it was given, and declare that as unsatisfactory to them, but they must also furnish sufficient matter, on the face of their warrant, to enable the judge to exercise his judgment upon it, in case the bankrupt should be brought up by *habeas corpus*. Indeed in strictness, perhaps, the whole examination should be set out ; at least, if it appears upon the face of the warrant that other questions were put, which are not set out, as if it state that the following questions “ amongst others” were put, or the like, the warrant will be bad. *Tomlin's case*, 1 Glyn & J. 373. see also *Crowley's case*, 2 Swanst. 1. *Bromley's case*, 2 Jac. & W. 453.

But the above section extends only to the two cases of commitment mentioned in it, namely, for refusing to answer, and for not answering fully. Therefore it is no objection to a warrant of commitment for refusing to be sworn, that it does not state the reason given by the bankrupt for his refusal, *Nobes v. Mountain & al.* 3 B. & B. 233, 7 Moore, 39, or that it does not set out any specific questions. *Ex p. Page*, 1 B. & A. 568.

It is no objection, however, to a warrant, that it was made in the absence of the bankrupt, and dated on the day of the examination, although not made for some days afterwards. *Salt's case*, 13, Ves. 361.

By stat. 6 Geo. 4. c. 16. § 38, if any gaoler to whose custody any bankrupt or other person shall be committed as aforesaid,

shall suffer such bankrupt or other person to escape, every such gaoler shall forfeit five hundred pounds.

*Re-examination and recommitment.*] If the bankrupt wish to purge his offence, and submit himself to the commissioners, he should send them notice to that effect, *per Buller, J. 1 T. R. 654*, and they will thereupon appoint a meeting, and grant their warrant to have him again brought before them; and if, in such a case, there be no effects to defray the expenses of the meeting, still the commissioners ought to meet, and receive their fees out of future effects, if there should be any. *Ex p. Cohen, 18 Ves. 294, and see Ex p. Graham, 2 Bro. 48.*

When the bankrupt is thus again brought up, he is examined as before; and if he still refuse to be sworn, or refuse to answer, or answer unsatisfactorily, or refuse to sign his examination, the commissioners may recommit him. And in this case there must be a new warrant; for if remanded upon the original warrant, he would be entitled to be discharged. *Ex p. Coombs, Cook, 454, 2 Rose, 396. Ex p. Brown, Cook, 454, 2 Rose, 400.*

*Habeas corpus.*] If the bankrupt have been properly committed, he can obtain his discharge only by submitting to the commissioners, as above mentioned; he will not be discharged, upon his application to the Lord Chancellor or one of the judges, merely on the ground that a further examination can be of no use to the creditors, *Ex p. Nowlan, 11 Ves. 511, or the like.*

If on the other hand, the bankrupt have been improperly committed, his only remedy is by *habeas corpus*; *Ex p. Tomkinson, 10 Ves. 106*; and this may be obtained upon motion in the Court of Chancery, or in any of the common law courts at Westminster, in term time, or by application to the Chancellor or any of the judges in vacation. *See Crowley's case, 2 Swanst. 1. See the form, Arch. Forms, 249.* Notice of the application, however, must be given to the assignees, in order that they may oppose his discharge if they think fit; and notice on the Saturday afternoon for the Monday following, will be deemed insufficient, unless the case be very clear. *Bromley's case, 2 Jac. & W. 453.*

When the bankrupt is brought up, in pursuance of the writ, the cause of his commitment, that is to say, the warrant, is returned upon it, and the judge then examines into its validity. And by stat. 6 Geo. 4. c. 16. § 39, if any person committed by the commissioners shall bring any *habeas corpus* in order to be discharged from such commitment, and there shall appear on

the return of such *habeas corpus* any such insufficiency in the form of the warrant whereby such person was committed, by reason whereof he might be discharged, it shall be lawful for the court or judge before whom such party shall be brought by *habeas corpus*, and such court or judge is hereby required, to commit such person to the same prison, there to remain until he shall conform, unless it shall be shewn to such court or judge by the party committed, that he has fully answered all lawful questions put to him by the commissioners ; or if such person was committed for refusing to be sworn, or for not signing his examination, unless it shall appear to such court or judge that he had a sufficient reason for the same : Provided also, that such court or judge shall, if required thereto by the party committed, in case the whole of the examination of the party so committed shall not have been stated in the warrant of commitment, inspect and consider the whole of the examination of such party, whereof any such question was a part ; and if it shall appear from the whole examination that the answer or answers of the party committed is or are satisfactory, such court or judge shall and may order the party so committed to be discharged.

*Action.*] Formerly it was holden that an action for false imprisonment would lie, at the suit of the bankrupt against the commissioners, for improperly committing him ; *Miller v. Seare & al.* 2 *W. Bl.* 1144. *Perkin v. Proctor*, 2 *Wils.* 382. and see *ante*, p. 9 ; and many such actions have been brought accordingly. But in a very recent case, it has been holden, that if the commissioners act within the limit of their authority, though from a mistaken judgment, they are not liable at all to an action ; *Doswell v. Impey & al.* 2 *D. & R.* 350, 1 *B. & C.* 168 ; and therefore where a person, suspected of concealing some of a bankrupt's property, was examined before the commissioners, and committed by them for not answering satisfactorily, it was holden that he could not maintain an action against the commissioners for committing him, whether the answers were really satisfactory or not. *Id.* And yet, since the decision of that case, it has been enacted by stat. 6 *Geo. 4. c. 16. § 40*, that in every action, in respect of any such commitment, brought by any bankrupt or other person committed, the court or judge, before which or whom such action is tried, shall, if thereto required by the defendant or defendants in such action (in case the whole of the examination of the party so committed shall not have been stated in the warrant of commitment), inspect and consider the whole of such examination ; and if upon such inspection and consideration it shall appear to such court or judge that the

party was lawfully committed, the defendant or defendants in such action shall have the same benefit therefrom, as if the whole of such examination had been therein stated. Whether this shall be deemed a legislative recognition of the right to bring such an action, and an implied declaration that the above decision of the Court of King's Bench, (a decision too upon demurrer, and made after great and deliberate consideration of all preceding authorities upon the subject,) is erroneous, or not, may perhaps admit of consideration. It may be, perhaps, that the legislature, at the time of the passing of this act, were not aware of the above decision.

As to the proceedings in actions against commissioners *see ante*, p. 9, &c.

*Not discovering his effects, not delivering them up, or embezzling them, felony.*] By stat. 6 Geo. 4. c. 16. § 112, if any person against whom any commission has been issued, or shall hereafter be issued, whereupon such person hath been or shall be declared bankrupt, shall not, before three of the clock upon the forty-second day after notice thereof in writing to be left at the usual place of abode of such person, or personal notice in case such person be then in prison, and notice given in the London Gazette of the issuing of the commission, and of the meetings of the commissioners, surrender himself to them, and sign or subscribe such surrender, and submit to be examined before them, from time to time, upon oath, or, being a quaker, upon solemn affirmation; or if any such bankrupt upon examination shall not discover all his real or personal estate, and how and to whom, upon what consideration, and when he disposed of, assigned, or transferred any of such estate, and all books, papers, and writings relating thereunto (except such part as shall have been really and *bond fide* before sold or disposed in the way of his trade, or laid out in the ordinary expense of his family); or if any bankrupt shall not upon such examination deliver up to the commissioners all such part of such estate, and all books, papers, and writings relating thereunto, as be in his possession, custody, or power (except the necessary wearing apparel of himself, his wife and children); or if any such bankrupt shall remove, conceal, or embezzle any part of such estate, to the value of ten pounds or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud his creditors, every such bankrupt shall be deemed guilty of felony, and be liable to be transported for life, or for such term, not less than seven years, as the court before which he shall be convicted shall adjudge, or shall be liable to be imprisoned only, or imprisoned and kept to hard labour, in any common gaol, peniten-



tiary house, or house of correction, for any term not exceeding seven years. See *R. v. Page*, 1 B. & B. 308, 7 Price, 616. *R. v. Bullock*, 1 Taunt. 71, 2 Leach, 996. *R. v. Frith*, 1 Leach, 10. *R. v. Cole*, 1 L. Raym. 443, 1 Hawk. c. 49, § 4.

And as to the delivery of books of account and papers, &c. by a bankrupt to his assignees, it is further enacted by stat. 6 Geo. 4. c. 17. § 116, that the bankrupt, after the choice of assignees, shall (if thereto required) forthwith deliver up to them, upon oath, before a master, ordinary or extraordinary, in Chancery, or justice of the peace, all books of account, papers, and writings relating to his estate, in his custody or power, and discover such as are in the custody or power of any other person; and if he refuse, the commissioners may commit him to such prison as they shall think fit, there to remain until he shall conform to the satisfaction of the commissioners or the Lord Chancellor. *Ex p. Bradley*, 1 Rose, 202. See the remainder of this section, *post*, sect. 19.

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## SECTION XII.

### *Examination of other Persons, relative to the Bankrupt's Estate.*

*Summons, &c.*] By stat. 6 Geo. 4. c. 16. § 33, it is enacted, that after adjudication it shall be lawful for the commissioners, by writing under their hands, to summon before them any person known or suspected to have any of the estate of the bankrupt in his possession, (*see Ex p. Anderson, Buck*, 397,) or who is supposed to be indebted to the bankrupt, or any person whom the commissioners believe capable of giving information concerning the person, trade, dealings, or estate of such bankrupt, or concerning any act or acts of bankruptcy committed by him, or any information material to the full disclosure of the dealings of the bankrupt; and it shall be lawful for the said commissioners to require such person to produce any books, papers, deeds, writings, or other documents in his custody or power, which may appear to the commissioners necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which the commissioners are authorized to inquire into: And if such person so summoned as aforesaid shall not

come before the commissioners at the time appointed, having no lawful impediment (made known to the said commissioners at the time of their meeting, and allowed by them), it shall be lawful for the said commissioners, by warrant under their hands and seals, to authorize and direct the person or persons therein named for that purpose, to apprehend and arrest such person, and bring him before them to be examined as aforesaid. *See the form of the summons*, ii. p. 91; *of the deposition of the service thereof*, ii. p. 95; *of the memorandum of his non-attendance*, ii. p. 89; *and of the warrant*, ii. p. 95.

The practice is, if the witness do not attend, a deposition as to the service of the summons is made by the person who served it, a memorandum of the non-attendance of the witness is entered on the proceedings, and then the commissioners issue their warrant. In determining whether they will issue their warrant, the commissioners must be acting together; but it is not necessary that all of them should be present when each of them signs it. *Battys v. Gresley*, 8 *East*, 319.

The above section has reference only to cases where the witnesses are at large; but by stat. 43 Geo. 3. c. 140, a judge may award a writ of *habeas corpus*, to bring a prisoner detained in any gaol in England, under civil or criminal process, before commissioners of bankrupt. *See as to the mode of suing out the writ*, 1 *Arch. Pr.*; *and see the form of the affidavit*, ii. p. 91; *of the præcipe for the writ*, ii. p. 92; *and of the writ*, ii. p. 92.

The bankrupt's wife may be thus summoned, *see* 6 Geo. 4. c. 16. § 37, *infra*, or brought up by *habeas* if in custody. A witness, also, who is summoned, cannot refuse to attend on the ground that he is incompetent to give evidence, as being a creditor, or the like. *Re Gooldie*, 2 *Rose*, 331, 1 *C. 19 Ves.* 481. *See ante*, p. 67.

*Witness's privilege from arrest.*] The witness is privileged from arrest in all civil suits, whilst he is going to, attending, or returning from, the meeting, *Ex p. Stow*, 2 *W. Bl.* 1142, *cit. Ex p. Kerney*, 1 *Atk.* 54, whether actually summoned by the commissioners or not, *Ex p. Byne*, 1 *V. & B.* 316, in the same manner as if attending a trial at law. *See* 1 *Arch. Pr. B. R.* 76—78.

*Examination and Commitment.*] By stat. 6. Geo. 4. c. 16. § 34, upon the appearance of any person so summoned or brought before the commissioners as aforesaid, or if any person be present at any meeting of the commissioners, it shall be lawful for them to examine every such person upon oath, either by word of mouth or by interrogatories in writing, concerning the person,

trade, dealings, or estate of such bankrupt, or concerning any act or acts of bankruptcy by such bankrupt committed, and to reduce into writing the answers of every such person, and such answers so reduced into writing the party examined is hereby required to sign and subscribe; and if any such person shall refuse to be sworn, or shall refuse to answer any lawful questions put to him by the said commissioners touching any of the matters aforesaid, or shall not fully answer to the satisfaction of the said commissioners any such lawful questions, or shall refuse to sign and subscribe his examination so reduced into writing as aforesaid (not having any lawful objection allowed by the said commissioners), or shall not produce any books, papers, deeds, and writings, or other documents in his custody or power relating to any of the matters aforesaid, which such person was required by the commissioners to produce, and to the production of which he shall not state any objection allowed by the said commissioners, it shall be lawful for them, by warrant under their hands and seals, to commit him to such prison as they shall think fit, there to remain without bail until he shall submit himself to them to be sworn, and full answers make to the [ir] satisfaction to all such lawful questions as shall be put to him, and sign and subscribe such examination, and produce such books, papers, deeds, writings, and other documents as aforesaid in his power, to the production of which no objection as aforesaid has been allowed.

And by sect. 37, it shall be lawful for the commissioners, in manner aforesaid to summon before them the wife of any bankrupt, and in manner aforesaid to examine her for the finding out and discovery of the estate, goods, and chattels of such bankrupt, concealed, kept, or disposed of by such wife, in her own person or by her act, or by any other person, and she shall incur such danger or penalty for not coming before the commissioners, or for refusing to be sworn and examined, or refusing to sign or subscribe her examination, or for not fully answering to the satisfaction of the commissioners, as is hereby provided against other persons. She cannot, however, be examined as to the bankruptcy of her husband, *Ex p. James*, 1 P. Wms. 611.

The commissioners ought not to examine any person who would not be a competent witness, with reference to the subject matter of the examination, according to the rules of evidence established in the courts of common law. *See ante*, p. 67. But the witness himself shall not be allowed to object to being examined, on this ground. *Ex p. Chamberlaine*, 19 Ves. 481. The bankrupt's partner has been obliged to give evidence, and to produce the partnership books and papers. *Ex p. Levett*, 1 Glyn & J. 185. A solicitor has been obliged to produce a deed

of the bankrupt's in his custody, in order to prove an act of bankruptcy, he not being the solicitor to the bankrupt. *Ex p. Law, Buck*, 110. But a petitioning creditor to a separate commission, shall not be compelled to give evidence in support of a subsequent joint commission against the same bankrupt and his co-partner. *Ex p. Stones & al.* 1 *Glyn & J.* 7.

The commissioners are authorized by the above section, to examine a witness concerning the "person, trade, dealings, or estate of the bankrupt, or concerning any act or acts of bankruptcy by such bankrupt committed;" and incidentally to this power, they may examine him also respecting other individuals, through whom they may be likely to obtain information on those points. And therefore, where a witness was asked questions as to when and where he had last seen the bankrupt's wife, it was holden that such questions were legal and material, and that the commissioners were justified in committing him for giving unsatisfactory answers to them. *Ex p. Vogel*, 2 *B. & A.* 219. But the commissioners shall not ask questions, the answers to which may subject the witness to fine or other punishment, as for a criminal act. *See Smith v. Beadnell*, 1 *Camp.* 30. *Ex p. Symes*, 11 *Ves.* 521. The Lord Chancellor, however, will not restrain the commissioners, or otherwise interfere with their discretionary power, as to the mode or object of their examination. *See Ex p. Farr*, 9 *Ves.* 513. *Ex p. Jones*, 1 *Rose*, 39, 19 *Ves.* 379. *Ex p. Parsons*, 1 *Atk.* 294. Where one Bland, a banker, being summoned before the commissioners, instead of attending them, petitioned the Lord Chancellor that he might be examined upon interrogatories, and have a copy of them previously given to him, and that the commissioners might be restrained from asking him questions on particular subjects specified; Lord Hardwicke dismissed the petition, saying, that he would not limit or restrain commissioners in their examinations. *Ex p. Bland*, 1 *Atk.* 205. Even where the petition stated that the object of summoning the petitioner before the commissioners as a witness, was, to obtain evidence to support an action brought by the assignees against himself, and prayed that the commissioners might be restrained from asking any questions relative to the subject of the action: the petition was dismissed with costs. *Ex p. Burlton*, 1 *Glyn & J.* 30. *See the form of a deposition before commissioners*, ii. p. 93; *the like by a quaker*, ii. p. 93. If the witness swear falsely, he is punishable as for perjury. 6 *Geo.* 4. c. 16. § 99, *ante*, p. 18.

The witness may, if he wish, have the assistance of counsel, to advise him in matters of law; he cannot indeed claim it as a right, it being discretionary with the commissioners whether they will allow him to be attended by counsel or not; *Ex p. Par-*

sons, 1 *Atk.* 204 ; but it is seldom refused. He cannot even claim to have a copy of his deposition, as a matter of right ; it being entirely in the discretion of the Lord Chancellor to grant or withhold them, *Bracy's case*, 1 *L. Raym.* 153, even although applied for merely with a view of enabling the witness to defend an action brought against him by the assignees. *Ex p. Chater, Buck*, 290. Where they were applied for on the ground that a bill for a discovery had been filed against the witness relating to the subject of the examination, and he wished to make his answer consistent with what he swore before the commissioners, the application was refused. *Boden v. Dellow*, 1 *Atk.* 289.

*Warrant.*] If the commissioners commit the witness, the warrant must be made out under their hands and seals, and directed to the messenger and to the keeper of the prison to which he is to be committed ; and if the commitment be for not answering, or for not fully answering to the satisfaction of the commissioners, the questions must be set out in the warrant, as directed *ante*, p. 189, the stat. 6 Geo. 4. c. 16. § 39, being equally applicable to the commitment of a witness and of the bankrupt. See *Ex p. Vogel*, 2 *B. & A.* 219, and *ante*, p. 186, &c. See the form of the warrant, ii. p. 94.

*Habeas, &c.* If a witness be wrongfully committed, he may have his remedy by writ of *Habeas Corpus*, in the same manner as the bankrupt. See *ante*, p. 191. Or if he wish to submit, and answer, he may be examined and discharged by the commissioners, or recommitted by them if he still fail to do what is required of him by the statute, in the manner mentioned *ante*, p. 191, with reference to the bankrupt.

*Witnesses' Expenses.*] By stat. 6 Geo. 4. c. 16. § 35, where any person known or suspected to have any of the estate of the bankrupt in his possession, or who is supposed to be indebted to the bankrupt, shall be summoned to attend before the said commissioners, every such person shall have such costs and charges as the said commissioners in their discretion shall think fit (see *Ex p. Roscoe*, 1 *Merivale*, 188) ; and every witness summoned to attend before the commissioners, shall have his necessary expenses tendered to him, as is now by law required upon service of a *subpœna* to a witness in an action at law. See 1 *Arch. Pr. B. R.* p.

As this section differs from the sections of the repealed acts upon the same subject, (1 *Ja.* 1. c. 15. § 11, and 3. *G.* 4. c. 81. § 2.) it is unnecessary to notice the cases decided upon them.

SECTION XIII.

*The Certificate.*

The certificate is an instrument, whereby the commissioners certify to the Lord Chancellor their adjudication, the advertisement in the Gazette, the several meetings in pursuance of it, the bankrupt's surrender and conformity, and his having passed his last examination and made a true discovery of his estate and effects; and that the certificate has been duly signed by the creditors, both in respect of number and value. It is signed and sealed by the commissioners; and the creditors sign a consent, at the foot of it, to the commissioners' signing and sealing it, to the bankrupt's having such allowance and benefit as are given him by statute, and to his being discharged from his debts. *See the form, ii. p. 96.*

*To be signed by the creditors.]* By stat. 6 Geo. 4. c. 16. § 122, such certificate shall be signed by four-fifths in number and value of the creditors of the bankrupt, who shall have proved debts under the commission to the amount of twenty pounds or upwards, or after six calendar months from the last examination of the bankrupt, then either by three-fifths in number and value of such creditors, or by nine-tenths in number of such creditors, who shall thereby testify their consent to the said bankrupt's discharge as aforesaid.

And by sect. 123, in all cases where any petition for the allowance of a certificate shall have been presented to the Lord Chancellor previous to the passing of this act, by virtue of the act passed in the fifth year of the reign of his present majesty, (5 Geo. 4. c. 98.) and hereby repealed, by any bankrupt whose certificate shall have been signed by the requisite number of creditors, with the exception of one whose signature is thereto necessary, and by the commissioners, it shall be lawful for the Lord Chancellor to allow any such certificate, and such certificate shall be a valid discharge as aforesaid, provided such petition shall have been duly served as in the said act required.

If a creditor, after proving his debt, die, his executor or administrator may sign the certificate; *Exp. Saumarez*, 1 Atk. 85;

and even where the bankrupt himself became the personal representative of his only creditor, his signing his own certificate was holden good, from necessity, for otherwise he never could have obtained his certificate ; *Cowper's case*, *Green*, 260, *Cook*, 464 ; but if an executor be also a creditor in his own right, he cannot sign twice, once for his testator, and a second time for himself. *Ex p. Stracey*, 1 *Rose*, 66. And a signing by one executor, although there be two or more, will be sufficient ; *Ex p. Saumarez*, 1 *Atk.* 85, so, a signing by one of two or more partners is sufficient, *Ex p. Mitchell*, 14 *Ves.* 97, even after a dissolution of their partnership. *Ex p. Hall*, 1 *Rose*, 2, 17 *Ves.* 62. But one trustee, it seems, cannot sign for himself and his co-trustees. *Ex p. Rigby*, 2 *Rose*, 224. And where a single woman proves a debt, and marries, the certificate must be signed by husband and wife ; *Cook*, 464 ; so, if a creditor become bankrupt, the signing should it seems, be by him and his assignee. *Id. ib.* Where a creditor, who has proved a debt, is paid by a surety, the surety, upon petition, will be allowed to sign the certificate. *Ex p. Gee & al.* 1 *Glyn & J.* 330. But a creditor, who after proof, assigns his debt, may nevertheless sign the certificate. *Ex p. Herbert*, 2 *Glyn & J.* 66. reversing *Ex p. Taylor*, 1 *Glyn & J.* 399. And it must be signed by such of the creditors only as have proved their debts ; and therefore the mere affidavit of debt made by the petitioning creditor, upon the opening of the commission, will not entitle him to sign the certificate. *Ex p. Davis*, 2 *Cox*, 398.

If it be signed by any person who had no legal right to prove under the commission, the certificate will be sent back. *Ex p. Buckner*, *Cook*, 463. and see *Ex p. King*, 15 *Ves.* 126. *Ex p. Bungle*, 17 *Ves.* 117.

It is not necessary, however, that the certificate should be actually signed by the creditors themselves ; if signed by any person deputed for that purpose by power of attorney, and that power of attorney be properly attested and authenticated, it will be sufficient. This is allowed, impliedly at least, by stat. 6 Geo. 4. c. 16. § 124 ; by which it is enacted, that the commissioners shall not sign any certificate, unless they shall have proof, by affidavit in writing, of the signature of the creditors thereto, or of any person thereto authorized by any creditor, and of the authority by which such person shall have so signed the same ; and if any creditor reside abroad, the authority of such creditor shall be attested by a notary public, British minister or consul ; and every such affidavit, authority, and attestation shall be laid before the Lord Chancellor, with the certificate, previous to the allowance thereof. See *the form of the power of attorney*, ii. p. 99 ; and *of the affidavit of the execution thereof*, ii. p. 100, 47 ;

and of the affidavit of having seen the creditors sign the certificate, n. p. 100.

The certificate, however, cannot be signed by any of the creditors, until after the bankrupt has passed his final examination. *Ex p. Brown*, 1 *Ross*, 176. And by *Ord. Eldon*, 8th August, 1809, it is ordered, that in all affidavits exhibited to the commissioners, in order to prove the signature and subscription of the consent of the creditors to the commissioner's signing and sealing the certificate of the bankrupt, the day of the month and year in which the respective creditors signed and subscribed such their consent be distinctly stated; and in order the better to ascertain the precise time at which the respective creditors shall sign such their consent, it is further ordered, that the said creditors do respectively, at the time of signing such their consent, write opposite their respective names the day of the month and year on which they do sign the same. See *Ex p. Laing*, 1 *Glyn & J.* 348. In a certificate where some of the creditors, instead of repeating the day of the month, had put the word "ditto" to their names, and others had omitted the year, they were held not to be material objections, they having been mentioned to the court. *In the matter of Davis*, 2 *Glyn & J.* 80.

That the bankrupt may have every facility of getting his certificate signed by his creditors, he shall be allowed to inspect the file of proceedings at all reasonable times, to ascertain what creditors have proved their debts under the commission; and the court upon petition will make an order to that effect, if such permission have been refused by the assignees or the solicitor to the commission. *Ex p. Morgan*, 1 *G. & J.* 404.

By stat. 6 Geo. 4. c. 16. § 125, any contract or security made or given by any bankrupt or other person unto or in trust for any creditor, or for securing the payment of any money due by such bankrupt at his bankruptcy, as a consideration or with intent to persuade such creditor to consent to or to sign such certificate, shall be void, and the money thereby secured or agreed to be paid shall not be recoverable, and the party sued on such contract or security may plead the general issue, and give this act and the special matter in evidence. Or if he, or any person for him, pay money for the like purpose, he may recover it back, in an action for money had and received. *Smith v. Bromley*, 2 *Doug.* 696. And a bond given to a creditor, to induce him to withdraw a petition he had preferred against the allowance of the certificate, has been holden to be within the statute, and void. *Sumner v. Brady*, 1 *H. Bl.* 647. and see *Jackson v. Lomas*, 4 *T. R.* 166. *Feise v. Randall*, 6 *T. R.* 146. *Thomas v. Rhodes*, 3 *Taunt.* 478. So, where a bankrupt, in the interval between the second and third meetings, gave a promissory note



for a pre-existing debt to a creditor, who was also acting as one of the commissioners at the time, and afterwards signed the bankrupt's certificate, but the debt itself was not proved under the commission: it was holden that such security was invalid, and that no action could be maintained upon it. *Hayward v. Chambers*, 5 B. & A. 753. Even where the agreement was, to pay a sum of money to the assignees, for the benefit of all the creditors, if they would sign the certificate, it was holden to be within the statute, and void. *Jones v. Burkley*, 2 Doug. 864.

*To be signed and sealed by the Commissioners.]* By stat. 6 Geo. 4. c. 16. § 122, no such certificate shall be such discharge, unless the commissioners shall, in writing under their hands and seals, certify to the Lord Chancellor that such bankrupt has made a full discovery of his estate and effects, and in all things conformed as aforesaid, (*see* 6 Geo. 4. c. 16. § 121. *infra*.) and that there does not appear any reason to doubt the truth or fullness of such discovery, and also that the creditors have signed in manner hereby directed, and unless the bankrupt make oath in writing that such certificate and consent were obtained without fraud, and unless such certificate shall, after such oath, be allowed by the Lord Chancellor, against which allowance any of the creditors of the bankrupt may be heard before the Lord Chancellor.

And by *Ord. Eldon*, 8th August, 1809, it is ordered, that the signature and sealing of the certificate by the commissioners, shall be attested in writing upon such certificate by the solicitor to the commission, or some clerk of the solicitor, or by the messenger to the commission, or by some clerk of the commissioners respectively. This order will not be dispensed with. Where one of the commissioners had not signed the certificate in the presence of the solicitor, &c., although he afterwards acknowledged his signature and seal in his presence, the certificate was not allowed, but was sent back to the commissioners to recertify. *Ex p. Jones*, 1 Glyn & J. 186.

To enable the commissioners to judge whether the certificate has been signed by the requisite number of creditors, and that no frauds may be practised upon them in this respect, it is ordered, by *Ord. Eldon*, 8th August, 1809, that a list shall be made and kept by the commissioners or one of them, of all creditors of above twenty pounds, who shall from time to time prove their debts, and of the amount of their respective debts; which list, as the same shall from time to time be made up, shall be signed by three of the commissioners. *See the form*, ii. p. 101.

And, before the commissioners sign the certificate, an affida-

vit of the signatures of the different creditors who have signed it, (*see the form*, ii. p. 100.) and all the powers of attorney authorizing others to sign it for them, together with the affidavits of execution of such powers, must be laid before them. *See* 6 Geo. 4. c. 16. § 124, *ante*, p. 200.

The duty of the commissioners consists merely in ascertaining and judging whether the bankrupt have made a full discovery of his estate and effects, whether he have in all other respects conformed himself to the laws in force concerning bankrupts at the time of the issuing of the commission, and whether the requisite number of creditors have signed the certificate in the manner directed by the statute ; and upon these subjects, they exercise a judicial discretion, with which neither the Lord Chancellor, *Ex p. King*, 11 Ves. 417, 13 Ves. 181, 15 Ves. 126, nor the courts of common law, *Ex p. King*, 7 East 92, will in any manner interfere. This discretion is entirely independent of the signing of the certificate by the creditors : the commissioners indeed cannot sign it, unless it be first signed by the creditors ; but they may refuse to sign it, although the creditors have signed it. They should not, however, be influenced in their judgment, by any part of the bankrupt's conduct, previous to his bankruptcy. *Ex p. Gardner*, 1 V. & B. 45. and *see* 18 Ves. 342.

Upon the commissioners signing the certificate, a memorandum thereof is placed among the proceedings. *See the form*, ii. p. 101.

*To be allowed.*] By stat. 6. Geo 4. c. 16. § 122, no such certificate shall be such discharge. unless the bankrupt make oath in writing, that such certificate and consent were obtained without fraud, and unless such certificate shall, after such oath, be allowed by the Lord Chancellor, against which allowance any of the creditors of the bankrupt may be heard before the Lord Chancellor. *See the form of the bankrupt's affidavit*, ii. p. 101. Where a joint certificate of two partners was signed by the creditors, but one of the partners died before he made this affidavit, the court upon petition allowed the certificate to be advertised for allowance as to the survivor. *Ex p. Cossart*, 1 Glyn & J. 248. and *see Ex p. Currie*. 10 Ves. 51. *Bromley v. Goodere*, 1 Atk. 76.

Notice, by advertisement in the Gazette, must be given, that the certificate will be allowed and confirmed, unless cause be shewn to the contrary on or before a certain day, which is always the 21st day from the appearance of the advertisement. *See the form*, ii. p. 102.

The affidavit of the signature of the creditors to the certificate, and the several powers of attorney, together with the affidavits,

of their execution, must be laid before the Lord Chancellor, previous to the allowance thereof. 6 Geo. 4. c. 16 § 124, *ante*, p. 200. The bankrupt's affidavit, above mentioned, is also left at the bankrupt office, with the certificate.

The Lord Chancellor, then, at the expiration of the 21 days will allow the certificate, unless some creditor in the mean time petition to stay the allowance. *See the form of the allowance*, ii. p. 102.

*In what cases suspended, stayed, recalled, or void.]* By stat. 6 Geo. 4. c. 16. § 130, no bankrupt shall be entitled to his certificate, or to be paid any such allowance (*see* 6 Geo. 4. c. 16. § 128, *post*, Sect. 19), and that any certificate, if obtained, shall be void, if such bankrupt shall have lost, by any sort of gaming or wagering, in one day twenty pounds, or within one year next preceding his bankruptcy two hundred pounds; or if he shall, within one year next preceding his bankruptcy, have lost two hundred pounds by any contract for the purchase or sale of any government or other stock; where such contract was not to be performed within one week after the contract, or where the stock bought or sold was not actually transferred or delivered in pursuance of such contract; or shall after an act of bankruptcy committed, or in contemplation of bankruptcy, have destroyed, altered, mutilated, or falsified, or caused to be destroyed, altered, mutilated, or falsified, any of his books, papers, writings, or securities, or made or been privy to the making of any false or fraudulent entries in any book of account or other document, with intent to defraud his creditors, or shall have concealed property to the value of ten pounds or upwards; or if any person having proved a false debt under the commission, such bankrupt, being privy thereto or afterwards knowing the same, shall not have disclosed the same to his assignees within one month after such knowledge. And in an action against the bankrupt, where he pleads his certificate, there is no necessity to reply the gaming, &c. specially, but the plaintiff may join issue on the plea, and give the special matter in evidence; for by the statute his certificate, in such a case, is a nullity. *Hughes v. Morley*, 1 B. & A. 22.

So, if the bankrupt, or any person for him, give money or security for money to a creditor, for signing the certificate, the certificate is void; even where it was given without the privity of the bankrupt, the certificate was holden void. *Holland v. Palmer*, 1 B. & P. 95. *Robson v. Calze*, 1 Doug. 228. *Ex p. Butt*, 10 Ves. 359. *Ex p. Hall*, 17 Ves. 62. And where the fourth, among several other signatures to a certificate, was obtained by a promise of the bankrupt to pay the creditor his whole debt:

[illegible]

*Bangley*, 17 *Ves.* 117, otherwise the court will not interfere. If the certificate have been obtained by fraud, no doubt the court upon application would stay the allowance. *Per Lord Hardwicke*, in *Ex p. Fydell*, 1 *Atk.* 74. So it is a good objection to a certificate, that it has been signed by the creditors before the last examination of the bankrupt; *Ex p. Brown*, 1 *Rose*, 176. *ante*, p. 181; or signed by a person who had no legal right to prove upon the estate. *Ex p. Buckner*, *Cook*, 463, *ante*, p. 181.

But it will not be stayed, merely because other creditors have proved their debts under the commission, since the certificate was signed; *Ex p. Fydell*, 1 *Atk.* 73; or to give time to a person who claims a right of stoppage *in transitu*, until his right be determined, in order that, if determined against him, he may prove, and assent or dissent to the certificate; *Ex p. Heath*, 6 *Ves.* 613; or because the bankrupt's accounts are in a slovenly state, unless it also appear that he refused to lend his assistance to elucidate them; *Ex p. Rawson*, 1 *Rose*. 67, *n.*; or that the bankrupt had not obtained his certificate under a former commission; *Ex p. Thompson*, 1 *Rose*, 285; or that the commissioners have neglected to certify a former bankruptcy; *Ex p. Black*, 1 *Rose*, 60; or that a petition to supersede the commission is pending; *Ex p. Bonson*, 2 *Rose*, 61; and see *Ex p. Cockayne*, 2 *Rose*, 233; or that a joint commission is sued out against the bankrupt and his partner, the certificate being under a separate commission; *Ex p. Tobin*, 1 *V. & B.* 308; or that the bankrupt has retained money which he received as assignee to another bankrupt estate; *Ex p. Anderson*, 1 *Rose*, 93; or that the assignees have allowed the bankrupts to carry on business in the same premises and under the same firm, and to continue in their houses with the use of their furniture; *id.*; nor will the certificate be stayed, upon a mere formal objection to a proof. *Ex p. Stracey*, 1 *Rose*, 66. and see *Ex p. Kennet*, 1 *Rose*, 331.

By one of the repealed statutes (5 Geo. 2. c. 30. § 12), if a bankrupt had given above £100 upon the marriage of his child, his certificate would be void, unless he could prove that he was worth at the time the sum so given beyond the payment of his debts. This is omitted in the present Act.

By stat. 6 Geo. 4. c. 16. § 122, already mentioned, any of the creditors of the bankrupt may be heard before the Lord Chancellor, against the allowance of the certificate. Any creditor who has proved his debt, may petition to stay the allowance, although he have signed the certificate. *Tudway v. Bourne*, 2 *Bur.* 718. Even a creditor who has only entered a claim, *Ex p. Fydell*, 1 *Atk.* 73. *Ex p. Williamson*, *id.* 81, or a creditor whose debt does not amount to £20, and who therefore could not have signed the certificate, *Ex p. Allen*, 7 *Vin. Abr.*

134, may petition against its allowance. A person appointed by the court to prove and receive dividends, may petition to stay the certificate, although it is doubtful if he could have signed it. *Per Lord Eldon, in Ex p. Shaw & al., 1 Glyn & J. 151.* So, a mortgagee may petition to stay the certificate, *Ex p. Whitechurch, 1 Glyn & J. 71, 2 Jac. & W. 548*, if he shew the probability of a balance being due to him, after the sale of the mortgaged premises. *Ex p. Ramsbottom, 2 Christian, B. L. 709.* But the court will not stay the allowance, upon the application of a creditor whose demand is unliquidated, and depends upon an account to be taken, especially if he do not swear to a balance in his favour; *Ex p. Johnson, 1 Atk. 81*; or of a party, the existence of whose debt depends upon the event of a trial at law; *Ex p. Heath, 6 Ves. 613*; or of a creditor who has not come in under the commission, and who has the means of trying the validity of the certificate at law. *Ex p. Dodson, Buck, 225.*

If the creditor, petitioning to stay the allowance of a certificate, have the bankrupt in custody, he must discharge him; presenting the petition being deemed an election to come in under the commission. *Ex p. Blaydes, 1 Glyn & J. 179.*

The petition cannot be withdrawn without the leave of the court, and then only upon an affidavit, shewing that it is not withdrawn from any improper motive. *Ex p. Gibson, 6 Ves. 5.*

The order, made upon the petition, must be drawn up and taken away from the office within three months, otherwise the bankrupt's petition will be allowed. *Ord. Loughb. 22 March, 1796.* So, after an order made to stay the certificate, a sufficient ground for the denial of it altogether must be laid before the court; for the court will not lock up certificates for ever, and deprive a man of the liberty which the law has given him. *Per Lord Hardwicke, in Ex p. Williamson, 1 Atk. 82. and see Ex p. Adams, 2 Bro. 48. Ex p. Fydell, 1 Atk. 73.*

For the mode of proceeding upon petition, *see post, Sect. 17.*

We have hitherto considered the means by which the creditors may prevent the allowance of the certificate. But even after it has been allowed, the Lord Chancellor may recall it; and he has ordered it to be thus recalled, where it appeared that the bankrupt had fraudulently procured the commission to be issued, and that his certificate had been obtained by the preponderance of fictitious creditors. *Ex p. Cawthorne, 2 Rose, 186, 19 Ves. 260.* But the case against the bankrupt must be a very clear one, to induce the court to recall the certificate; *Ex p. Hood, 1 Glyn & J. 219*; and an application for that purpose has been refused, where the bankrupt had his certificate upwards of six years. *Ex p. Reed, Buck, 430.*

*Its effect.*] First, by stat. 6 Geo. 4. c. 16. § 121, every bankrupt who shall have duly surrendered, and in all things conformed himself to the laws in force concerning bankrupts at the time of issuing the commission against him, shall be discharged from all debts due by him when he became bankrupt, and from all claims and demands hereby made proveable under the commission, in case he shall obtain a certificate of such conformity, so signed and allowed, and subject to such provisions as hereinafter directed (*see* 6 Geo. 4. c. 19. § 122, *ante*, p. 199); but no such certificate shall release or discharge any person who was partner with such bankrupt at the time of his bankruptcy, or who was then jointly bound, or had made any joint contract with such bankrupt. Nor does signing the certificate of a surviving partner, release the estate of a deceased partner, *Sleech's case*, 1 *Merivale*, 570.

What debts are proveable under a commission, we have already seen, *ante*, p. 73—107. And the certificate will be a bar not only to actions for debts contracted in England, but to actions for the debts of Scotch creditors, *Royal Bank of Scotland v. Cuthbert*, 1 *Rose*, 462, of Irish creditors, and of all foreign creditors. *Odwin v. Forbes*, *Buck*, 57. And on the other hand, a certificate obtained by a bankrupt in Ireland, or any foreign country, will be a bar to an action in this country for a debt contracted in Ireland or the foreign country, *Potter v. Brown*, 5 *East*, 124. *Ballantine v. Golding*, *Cook*, 487, but not to an action for a debt contracted here. *Smith v. Buchanan*, 1 *East*, 6. *Quin v. Keefe*, 2 *H. Bl.* 553. *Shallcross v. Dysart*, 2 *Glyn & J.* 87. And where a bill of exchange was drawn in Ireland, and accepted and paid in this country, it was holden to be a debt contracted here, and that the certificate of the drawer, obtained in Ireland, was no bar to an action brought against him by the acceptor in England. *Lewis v. Owen*, 4 *B. & A.* 654. But a certificate is no bar to an action of trover, even in cases where the plaintiff has his option to bring trover or assumpsit; *Parker v. Norton*, 6 *T. R.* 695, and *see De Tastet v. Sharpe & al.* 3 *Mad.* 51, *Buck*, 153; nor to trespass for mesne profits; *Goodtitle v. North*, 2 *Doug.* 584. *see Gulliver v. Drinkwater*, 2 *T. R.* 261; nor does it prevent an extent against the bankrupt's after acquired property, the crown not being bound by the bankrupt laws. *Anon.* 1 *Atk.* 262.

But by stat. 6 Geo. 4. c. 16. § 127, if any person who shall have been so discharged by such certificate as aforesaid, or who shall have compounded with his creditors, or who shall have been discharged by any insolvent act, shall be or become bankrupt, and have obtained or shall hereafter obtain such certificate as aforesaid, unless his estate shall produce (after all

charges) sufficient to pay every creditor under the commission fifteen shillings in the pound, such certificate shall only protect his person from arrest and imprisonment, but his future estate and effects (except his tools of trade, and necessary household furniture, and the wearing apparel of himself, his wife and children) shall vest in the assignees under the said commission, who shall be entitled to seize the same in like manner as they might have seized property of which such bankrupt was possessed at the issuing the commission. *See Ex p. Hodgkinson*, 19 Ves. 291. And this, although the former commission have been superseded; *Thornton v. Dallas*, 1 Doug. 46; or although all the former creditors did not come in under the deed of composition; *Slaughter v. Cheyne*, 1 M. & S. 182; or although the party taking advantage of this insufficiency of the second certificate, had himself signed it. *Philpot v. Corden*, 5 T. R. 287. But a composition with a certain class of creditors, as for instance with joint creditors only, *Norton v. Shakespeare*, 15 East, 619, or a composition with all his creditors generally, if he have afterwards paid them twenty shillings in the pound before his bankruptcy, *Read v. Sowerby*, 1 M. & S. 78, will not deprive a bankrupt of the benefit of his certificate. In any action, where a bankrupt pleads his certificate, and the other party wishes to avoid the effect of it under this section of the act, if he plead the certificate generally the other party may give the special matter in evidence under the *similiter*, for a replication of the special matter in such a case would be demurrable; *Wilson v. Kemp*, 3 Camp. 499, n., 2 M. & S. 549; but if the bankruptcy and certificate be pleaded specially, then the other party must reply the special matter. And in order to prove a former commission, it will be sufficient to produce the commission and proceedings, and prove that the defendant submitted to it, without proving the trading, act of bankruptcy, &c.; *Heviland v. Cook*, 5 T. R. 655. *Gregory v. Merton*, 3 Esp. 195; and the certificate under such former commission must be proved, either by producing it, or by secondary evidence of it after notice to the bankrupt to produce it. *Graham v. Grill*, 4 Camp. 282. *Henry v. Leigh*, 3 Camp. 499. The onus then lies upon the bankrupt to prove that he has paid fifteen shillings in the pound under his second commission; *Gregory v. Merton*, 3 Esp. 195. *Edmondson v. Parker*, 3 B. & P. 185; merely proving that his estate is likely to produce fifteen shillings in the pound, will not be sufficient. *Coverley v. Morley*, 16 East 225. and see *Jelfs v. Ballard*, 1 B. & P. 467.

Also, by stat. 6 Geo. 4 c. 16. § 105, if an assignee, indebted to the estate of which he is such assignee, in respect of money so retained or employed by him as aforesaid (*see sect. 104, ante*,



p. 120), become bankrupt, if he shall obtain his certificate, it shall only have the effect of freeing his person from arrest and imprisonment ; but his future effects (his tools of trade, necessary household goods, and the necessary wearing apparel of himself, his wife and children excepted) shall remain liable for so much of his debts to the estate of which he was assignee, as shall not be paid by dividends under his commission, together with lawful interest for the whole debt.

2. By stat. 6 Geo. 4. c. 16. § 120, any bankrupt who shall, after his certificate shall have been allowed, be arrested, or have any action brought against him, for any debt, claim, or demand hereby made proveable under the commission against such bankrupt, shall be discharged upon common bail, and may plead in general that the cause of action accrued before he became bankrupt, and may give this act and the special matter in evidence, and such bankrupt's certificate, and the allowance thereof, shall be sufficient evidence of the trading, bankruptcy, commission, and other proceedings precedent to the obtaining such certificate ; and if any such bankrupt shall be taken in execution, or detained in prison for such debt, claim, or demand, where judgment has been obtained before the allowance of his certificate, it shall be lawful for any judge of the court wherein judgment has been obtained, on such bankrupt's producing his certificate, to order any officer who shall have such bankrupt in custody by virtue of such execution, to discharge such bankrupt without exacting any fee, and such officer shall be hereby indemnified for so doing. *See* ii. p. 103. This, however, does not extend to process at the suit of the crown, such as an extent ; for the crown is not bound by the statute of bankrupts. *Anon.* 1 *Atk.* 262. Nor does it extend to any seizure of the property of the bankrupt, but is confined to an imprisonment of his person merely. *Cullen v. Meyrick*, 1 *T. R.* 361. *See Lister v. Mundell*, 1 *B. & P.* 427. And even in cases apparently within the act, if it appear that the certificate was obtained by fraud, *Vincent v. Brady*, 2 *H. Bl.* 1. *Sowley v. Jones*, 2 *W. Bl.* 725. *Martin v. O'Hara*, *Cowp.* 823, or that there are other good grounds for disputing its validity, *Stacey v. Frederici*, 2 *B. & P.* 390, the Judge will not interfere in a summary way, but will leave the defendant to plead his bankruptcy and certificate. And where the bankrupt was taken under an attachment for not performing an award, the court refused to discharge him, without giving the other party time to shew that the certificate was fraudulently obtained. *Nowers v. Colman*, *Buck*, 5.

The above section, of course, has reference to cases only where the bankrupt has obtained his certificate under an English commission ; if the bankrupt, who has obtained his certifi-

cate in a foreign country, be arrested here upon mesne process, the court will not discharge him upon common bail, but will leave him to whatever remedy he may have by pleading. *Philpotts v. Reed*, 1 B. & B. 13.

3. If a defendant in a bailable action become bankrupt, and obtain his certificate before his bail are fixed, the bail will thereupon be discharged; *Johnson v. Lindsay*, 2 D. & R. 385, 1 B. & C. 247. *Woolley & al. v. Cobbe & al.* 1 Bur. 244; but if the bail be fixed before the allowance of the certificate, they remain liable, and the court cannot relieve them. *Stapleton v. Macbar*, 7 Taunt. 589. and see 1 Arch. Pr. B. R. 282, 283.

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#### SECTION XIV.

##### *The Dividend.*

*Assignees' accounts audited.*] By stat. 6. Geo. 4. c. 16. § 106, the commissioners shall at the meeting appointed for the last examination of the bankrupt, appoint a public meeting, not sooner than four calendar months from the issuing of the commission, nor later than six calendar months from the last examination of the bankrupt, whereof, and of the purport whereof, they shall give twenty-one days notice in the London Gazette, to audit the accounts of the assignees; and the assignees at such meeting shall deliver upon oath a true statement, in writing, of all money received by them respectively, and when and on what account, and how the same have been employed; and the commissioners shall examine such statement, and compare the receipts with the payments, and ascertain what balances have been from time to time in the hands of such assignees respectively, and shall inquire whether any sum appearing to be in their hands ought to be retained; and it shall be lawful for the said commissioners to examine the said assignees upon oath, touching the truth of such account, and in such accounts the said assignees shall be allowed to retain all such money as they shall have expended in suing out and prosecuting such commission, and all other just allowances. See the form of the advertisement, ii. p. 109; of the memorandum of having audited the assignees' accounts, ii. p. 109; of the assignees' account, ii. p. 111; and of the affidavit to verify it, ii. p. 112.

And by sect. 107, (*infra*,) no dividend shall be declared, unless the accounts of the assignees shall have been first so au-

dited as aforesaid, and such statement delivered by them upon oath as aforesaid. This, therefore, applies not only to the first, but to every subsequent dividend. *See 6 Geo. 4. c. 16. § 109, infra. See the forms for a further dividend, ii. p. 117; and for a final dividend, ii. p. 120.*

If the assignees refuse or neglect to attend the meeting thus appointed, or to produce their accounts, the Lord Chancellor, upon the petition of any of the creditors, will compel them, under the penalty of an attachment. *See Ex p. Whitchurch, 1 Atk. 91.* So, if the commissioners, upon application, refuse to call the meeting, a creditor may have the like remedy by petition. *See Ex p. Brocksopp, Buck, 304*

Before the assignees attend at this meeting, they should pay the bills of the solicitor who sued out the commission, and of the messenger,—and also the bill of the solicitor to the commission, since the choice of assignees, if it be taxed,—if they have funds enough in their hands for that purpose. *See the next Section, title costs.*

*Dividends declared.]* By stat. 6 Geo. 4. 16. § 107, the commissioners shall, not sooner than four nor later than twelve calendar months from the issuing the commission, appoint a public meeting (whereof and of the purpose whereof they shall give twenty-one days notice in the London Gazette,) to make a dividend of the bankrupt's estate, at which meeting all creditors who have not proved their debts shall be entitled to prove the same; and the said commissioners at such meeting shall order such part of the net produce of the bankrupt's estate in the hands of the assignees, as they shall think fit, to be forthwith divided amongst such creditors as have proved debts under the commission, in proportion to their respective debts, and shall make an order for a dividend in writing under their hands, and shall cause one part of such order to be filed amongst the proceedings under the commission, and shall deliver another part thereof to the assignees, which order shall contain an account of the time and place of making such order, of the amount of the debts proved, of the money remaining in the hands of the assignees to be divided, of how much in the pound is then ordered to be paid to every creditor, and of the money allowed by the commissioners to be retained by the assignees, with their reason for allowing the same to be so retained; and the assignees, in pursuance of such order, (and without any deed of distribution made for that purpose,) shall forthwith make such dividend, and shall take receipts in a book to be kept for that purpose, from each creditor, for the dividend received by such creditor; and such order and receipt shall be a discharge to every assignee

for so much as he shall pay pursuant to such order ; and no dividend shall be declared, unless the accounts of the assignees shall have been first so audited as aforesaid, and such statement delivered by them upon oath as aforesaid. *See the form of the order*, ii. p. 112 ; *the like for a further dividend*, ii. p. 118 ; *the like for a final dividend*, ii. p. 120. *See also the form of the receipt*, ii. p. 115.

After the first or other dividend, all persons who prove their debts before a subsequent dividend is actually declared, and the order for the dividend made, will be entitled to a dividend upon the amount of their debts, equal to all the previous dividends received by the other creditors, if there be funds sufficient in the hands of the assignees to pay it ; and if there be more than sufficient to pay it, the surplus will be ordered to be divided amongst all the creditors, as well those who have last proved, as those who had proved before. *See 1 Atk. 208. Ex p. Peachy, Id. 111. Ex p. Long, 2 Bro. 50. Re Wheeler, 1 Sch. & Lef. 242. and see the order for a further dividend*, ii. p. 118. As to the claims which have been entered, they are usually allowed to remain until the final dividend, when they are struck out as a matter of course, if the creditor do not attend and substantiate them. *2 Cook, 134. See ante, p. 110.*

The assignees usually give notice of the time and place at which the dividend will be paid ; and in order to save them trouble, the solicitor to the commission usually computes the amount of each creditor's dividend, and gives him an order for it upon the acting assignee, who pays it, and takes a receipt for it in the manner above directed. In paying the dividend, the assignee may retain out of it the amount of any private debt due to himself by the creditor ; *Ex p. Nockold, Cook, 509. See Ex p. White, 1 Atk. 90. Bishop v. Church, 3 Atk. 691, cont.* ; but where the creditor, after proving under the commission, sold and assigned his debt to another, it was holden that the assignees could not retain out of the dividend the amount of costs due to them by the creditor, which had accrued subsequently to the assignment. *Ex p. Whitehead, 1 Glyn & J. 39.*

*Final dividend.*] By stat. 5 Geo. 4. c. 16. § 109, if the bankrupt's estate shall not have been wholly divided upon the first dividend, the commissioners shall, within eighteen calendar months after the issuing of the commission, appoint a public meeting, (whereof and of the purport whereof they shall give twenty-one days notice in the London Gazette,) to make a second dividend of the bankrupt's estate, when all creditors who have not proved their debts may prove the same ; and the commissioners at such meeting, after taking such audit as herein-

before directed, shall order the balance in the hands of the assignees to be forthwith divided amongst such of the creditors as shall have proved their debts; and such second dividend shall be final, unless any action at law or suit in equity be depending, or any part of the estate be standing out, not sold or disposed of, or unless some other estate or effects of the bankrupt shall afterwards come to the assignees, in which case they shall, as soon as may be, convert such estate and effects into money, and within two calendar months after the same shall be so converted, divide the same in manner aforesaid. *See the form for a further dividend*, ii. 118, *and for a final dividend*, ii. p. 120.

As to the interest payable to creditors upon their debts, in case there is a surplus, *see* 6 Geo. 4. c. 16. § 132, *post*, in Sect. 19.

*Remedy for dividends.*] By stat. 6 Geo. 4. c. 16. § 111, no action for any dividend shall be brought against the assignees by any creditor who shall have proved under the commission, but if the assignees shall refuse to pay any such dividend, the Lord Chancellor may, on petition, order payment thereof, with interest for the time that it shall have been withheld, and the costs of the application. And the interest is calculated at five per cent. *Ex p. Loxley*, 1 Glyn & J. 345.

This remedy by petition, being substituted for the former remedy by action, the application can be resisted by the assignees on those grounds only that they might have availed themselves of as a defence to an action. *Ex p. Hodges, Buck*, 524. They cannot dispute the debt; they must make that the subject of a distinct petition to be preferred by themselves; but under circumstances, the court may direct the creditor's petition to stand over, that a petition by the assignees to impeach the debt may be presented. *Ex p. Loxley, Buck*, 456, *and see Ex p. Whiteside*, 1 Rose, 319. *Ex p. Atkinson*, 3 V. & B. 13. *Ex p. Graham*, 1 Rose, 456. *Ex p. Alsopp*, 1 Mud. 603. An assignee died, having fraudulently received the dividends declared, and applied them to his own use. In a suit by the commissioners and surviving assignee, his estate was held liable to refund the amount so misapplied with interest at £5 per cent. *Wackerball v. Powel*, 2 Glyn & J. 151.

*Unclaimed dividends.*] By stat 6 Geo. 4. c. 16. § 110, if any assignee under any commission of bankrupt, shall have, either in his own hands or at any bankers, or otherwise subject to his order or disposition, or to his knowledge in the hands of, or in the order and disposition of himself and any co-assignee or co-assignees, or of any or either of them, any unclaimed dividend

or dividends, amounting in the whole to the sum of fifty pounds, and shall not within six months after this act shall have taken effect, or two calendar months after the expiration of one year after the declaration and order of payment of such dividend or dividends made by the commissioners, either pay (*sic*) to the creditor or creditors entitled thereto, or cause a certificate thereof to be filed in the office of the Lord Chancellor's Secretary of Bankrupts, containing a full and true account of the name or names of the creditor or creditors to whom such unclaimed dividend or dividends is or are respectively due, and of the amount of such dividend or dividends respectively (such account being signed by the assignee or assignees rendering the same, and attested by the solicitor to the commission, or the solicitor to the assignee or assignees signing the same), such assignee or assignees shall be charged, in account with the estate of the bankrupt, interest upon such unclaimed dividend or dividends, to be computed from the time that such certificate is hereby directed to be filed, at the rate of five pounds *per centum per annum*, for such time as he shall thenceforth retain the same, and also such further sum as the commissioners shall think fit, not exceeding in the whole twenty pounds *per centum per annum*; and the Lord Chancellor, or the said commissioners, may order the investment of any unclaimed dividends, in the public funds, or in any government security, for or on account of the creditors entitled, and subject to such order as the Lord Chancellor may think fit to make respecting the same, who, if he shall think fit, may, after the same shall have remained unclaimed for the space of three years from the declaration of such dividends by the commissioners, order the same to be divided amongst and paid to the other creditors, and the proof of the creditors to whom such dividends were allotted shall from thenceforth be considered as void as to the same, but renewable as to any future dividends, to place them *pari passu* with the other creditors, but not to disturb any dividends which shall have been previously made.

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#### SECTION XV.

##### Costs.

*What, and by whom payable.*] By stat. 6 Geo. 4. c. 16. § 14, the petitioning creditor or creditors shall, at his or their own costs, sue forth and prosecute the commission until the choice are not liable to the messenger for his fees before the choice of assignees. *Burwood v. Felton*, 3 B. & C. 43. If suits in

of assignees; and the commissioners shall, at the meeting for such choice, ascertain such costs, and by writing under their hands direct the assignees (who are hereby thereto required) to reimburse such petitioning creditor or creditors such costs out of the first money that shall be got in under the commission; and all bills of fees or disbursements of any solicitor or attorney, employed under any commission, for business done after the choice of assignees, shall be settled by the commissioners, except that so much of such bills as contain any charge respecting any action at law, or suit in equity, shall be settled by the proper officer of the court in which such business shall have been transacted, and the same, so settled, shall be paid by the assignees to such solicitor or attorney: Provided that any creditor (*see Ex. p. Walker, 1 Glyn & J. 95*) who shall have proved to the amount of twenty pounds or upwards, if he be dissatisfied with such settlement by the commissioners, may have any such costs and bills settled by a master in Chancery, who shall receive for such settlement, and the certificate thereof, twenty shillings, and no more.

The costs to be paid by the petitioning creditor, consist of the bill of the solicitor who sued out the commission, and the bill of the messenger, for the business done, up to the choice of assignees; (*for items of these bills, see. ii. 12 post.*) He is also entitled to be allowed out of the bankrupt's estate, costs incurred by him in successfully resisting a petition to supersede the commission. *Ex p. Bottomley, 5 Mad. 91.*

The solicitor is not liable to the messenger for his bill unless in cases of fraud; but where the commission was issued at the instance of the solicitor, and the petitioning creditor was merely the instrument of the solicitor's fraud and was insolvent, the court ordered the solicitor to pay the messenger's bill to the choice of assignees. *Ex p. Burwood. 2 Glyn & J. 70.*

The costs to be paid by the assignees, consist of the bills of the solicitor and messenger for business done subsequently to the choice of the assignees, and the costs of all actions, and suits in equity, by or against the assignees, and all collateral proceedings arising from the bankruptcy; (*for the items in such bills, see. ii. 12 post.*) And for these costs the assignees are liable, although the commission be superseded, and whether they have assets or not; *Ex p. Hartop, 9 Ves. 109, 12 Ves. 349, and see Ex p. Vaughan, 14 Ves. 513*; and they may afterwards reimburse themselves out of any assets they may get in. Even after final dividend, they have been holden liable for the amount of the messenger's bill; for they should have reserved sufficient to satisfy that demand before they distributed all the funds. *Ex p. Bartop, 1 Rose, 449.* But the assignees

equity, for instance, be commenced or carried on, by the directions of the assignee, but without the consent of the creditors previously obtained at a meeting called for the purpose, according to the directions of the statute, (*see post*, Sect. 18,) the assignees will be liable for the costs, but they cannot charge them to the estate. *Ex p. Whitchurch*, 1 Atk. 210.

See "Costs" in Sect. 17, *post*.

*Taxation of them.*] The petitioning creditor's costs, namely, the solicitor's and messenger's bills up to the choice of assignees, are "ascertained" or taxed by the commissioners at the meeting for the choice of assignees. See 6 Geo. 4. c. 16. § 14, *supra*. Whether the proviso in the latter part of the above section, as to a revision of the commissioners' taxation by a master, was meant by the legislature to extend to this taxation of the petitioning creditor's costs, is perhaps doubtful; from the word "settlement" in it, as referring to the word "settled" in the clause relating to the costs of the assignees, it should seem that it was not intended to do so. The Lord Chancellor, however, on petition, upon a proper case being made out, shewing the charges allowed by the commissioners to be objectionable, will refer the solicitor's or messenger's bill, up to the choice of assignees, to a master, to be retaxed; *Ex p. Arrowsmith*, 13 Ves. 124. *Ex p. Neale*, Buck, 111. *Ex p. Emery*, Buck, 422. *Ex p. Earl of Uxbridge*, J Ves. 425. *Ex p. Smith*, 5 Ves. 706. *Ex p. Vincent*, Cook, 17; but errors must be pointed out specifically, or it must appear that the solicitor has refused to give a copy of his bill. *Ex p. Sutton*, 4 Mad. 395. *Ex p. Brereton*, Id. 479; or that the commissioners had excluded the assignees or their solicitor from being present at the examination. *Ex p. Palmer*, 2 Glyn & J. 34, to induce the court to order such a revision. And where the solicitor had agreed with the petitioning creditor to work the commission without any expense to him, the court held this to be such an abuse of the great seal, as to preclude the petitioning creditor from seeking the assistance of the court to obtain such a revision. *Ex p. Wilson*, Buck, 306. And the court on petition will enter into consideration as well of a particular item of expense disallowed by the commissioners, as of the principle upon which they have proceeded in their taxation, and where the commissioners had refused to allow the assignees the expenses incurred by employing an accountant and clerks in investigating the bankrupt's accounts. It was on petition referred to the master, to ascertain whether such expenses were necessarily and properly incurred. *Ex p. Anthony*, 21 March, 1827, on appeal from S. C. 2 Glyn & J. 55.

As to the assignees' costs, namely, for business done after the



choice of assignees: all costs incurred by them in actions at law and suits in equity, must be taxed by the proper officer of the court in which such actions or suits respectively have been prosecuted; all other costs must be "settled" or taxed by the commissioners; and the commissioners are to tax such costs from time to time without waiting till the whole business is concluded, for no payment ought to be made to the solicitor for business until the bill is taxed. *Ex p. Gore*, 2 Glyn & J. 117. And if any creditor, who has proved a debt to the amount of £20 or upwards, be dissatisfied with the taxation, "he may have any such costs and bills settled by a master in chancery." 6 Geo. 4. c. 16. § 14, *supra*. The assignees, however, may make themselves liable to their solicitor, beyond what is thus allowed in taxation; although they cannot, it should seem, charge the estate with more than the amount taxed. *Finchett v. How & al.* 2 Camp. 278. And all other costs in bankruptcy, such as costs for superseding the commission upon the petition of the bankrupt, *Ex p. Hatherway*, 2 Mad. 329, or for obtaining the bankrupt's certificate, *Ex p. Warren*, MS, or the like, may be taxed by a master in like manner. And when the commission was superseded by arrangement between the parties, and the bankrupt paid the solicitor's bill without taxation, in order to facilitate the supersedeas, the court, on petition, ordered it to be taxed by the master, *Ex p. Heyden*, 2 Glyn & J. 52.

If one-sixth of the amount of the bill, or more, be taken off in taxation, the costs of taxation shall be paid by the party whose bill is taxed, as in other cases. *Ex p. Wood & al.*, Buck, 129. *Ex p. Bellott*, 4 Mad. 379. *Ex p. Hatherway*, 2 Mad. 329.

*Remedy for them.*] For the amount of the petitioning creditor's costs, the solicitor's and messenger's remedy is, not by petition, *Ex p. ———*, Buck, 175, but see *Ex p. Johnson*, 1 Glyn & J. 23, *semb. cont.*, but by action; and the action must be brought against the petitioning creditor, and not by the messenger against the solicitor, *Hartop v. Jukes*, 3 M. & S. 438. *Hart v. White, Holt*, 376. See *Ex p. Hartop*, 12 Ves. 349, or by the solicitor or messenger against the assignees. *Burwood v. Felton*, 4 D. & R. 621. *Ex p. Haynes*, 1 Glyn & J. 35. And where the petitioning creditor was afterwards made assignee, and the action was brought against him and the other assignee jointly, it has holden that the plaintiff could not recover, *Finchett v. How & al.*, 2 Camp. 278. See *Tarn v. Heys*, 1 Stark. 278. But where a solicitor agrees with the petitioning creditor to work the commission for a certain sum, in that case, as soon as he receives as much as is sufficient to pay the messenger's bill, the messenger may main-

tain an action against him for the amount of it, as for so much money had and received to his use. *Hartopp v. Jukes*, 2 M. & S. 438. So, where the solicitor who sued out the commission, was retained by the assignees, and having made out and delivered his bill to them, as well for the business done before the choice of assignees as for that done after, was paid by them a sum of money on account generally: it was holden that he was bound (as the assignees themselves would have been) to appropriate the sum so received to the payment of that portion of the bill for which the petitioning creditor was liable; and that therefore, in an action by the petitioning creditor against him for the amount of a private debt, he could not, under those circumstances, set off the amount of the petitioning creditor's costs of the commission, for they were already satisfied. *Phillips v. Dicas*, 15 East, 248. In another case, indeed, it was holden at *nisi prius*, that where assignees retain the same solicitor that sued out the commission, they make themselves liable to him for the costs as well before as after the choice of assignees, as upon an original retainer; *Tarn v. Aeyss*, Holt, 378, 1 Stark, 278; but this may, I think, be doubted. The petitioning creditor, however, is liable only for the ordinary and necessary expenses, unless incurred by his orders; and therefore it has been holden that he was not liable to the messenger for the expenses of an unnecessary and fruitless journey to the Isle of Man, undertaken without his authority. *Billings v. Waters*, 1 Stark, 363.

Whatever sums the petitioning creditor is thus obliged to pay, he must be reimbursed out of the first money that is got in under the commission; 6 Geo. 4. c. 16. § 14, *supra*; and his remedy for it is by petition, or perhaps by action against the assignees for money had and received. But he cannot petition to be paid his costs by an assignee who has been removed; and when it was against such an assignee and also against the assignee appointed in his stead, the court held that they could make an order on the latter only. *Re Gibson*, 1 Glyn & J. 303.

As to the costs for which the assignees are liable, the solicitor or messenger may have his remedy, either by petition, *Ex p. Hartopp*, 1 Ross, 449, or by action; and this, even before the bill has been taxed by the master. *Tarn v. Heys*, 1 Stark, 278. See *Finchett v. How & al.*, 2 Camp. 278. Where the solicitor who sued out the commission, was retained by the assignees, and was paid by them money on account generally, having previously delivered to them his bill, as well for business done before the choice of assignees as for that done after: it was holden that the sum so paid to him should be appropriated in the first place to the payment of that portion of the bill for which the petitioning creditor was liable. *Phillips v. Dicas*, 15 East, 248.

time. *Ex p. Freeman*, 1 Rose, 380. and see *Re Hayes*, 1 Glyn & J. 255. The commission is deemed prosecuted, where the advertisements declaring the bankruptcy have appeared in the Gazette, *Ex p. Leicester*, 6 Ves. 429. *Ex p. Layton*, *Ex p. Hardwicks*, 6 Ves. 434. and see *Ex p. Henderson*, 2 Rose, 190. *Ex p. Maver*, 19 Ves. 539, or, under circumstances, if the party be declared a bankrupt, *Ex p. Ellis*, 7 Ves. 135. *Ex p. Soppit*, *Buck*, 81, within the limited time.

4. If a bankrupt, after a docket struck against him, give to the creditor who struck it any money, security, or other satisfaction for his debt, or any part thereof, the Lord Chancellor, in such a case, may either declare such commission to be valid, and direct the same to be proceeded in, or may order it to be superseded, and a new commission may thereupon issue. 6 Geo. 4. c. 16. § 8. *ante*, p. 48. *Ex p. Brine*, *Buck*, 19, 168. and see *Ex p. Thompson*, 1 Ves. 157. The court, however, will not supersede the commission upon this ground, upon the petition of the bankrupt. *Ex p. Kirk*, 15 Ves. 464.

5. Formerly, if the commission were concerted between the bankrupt and the petitioning creditor, however beneficial it might appear to be to the creditors, *Ex p. Edmonson*, 7 Ves. 303. *Ex p. Brookes*, *Buck*, 257. *Ex p. Gouthwaite*, 1 Rose, 87. *Ex p. Prosser*, *Buck*, 77., or if it were the bankrupt's commission, that is to say, one sued out at his instigation, however hostilely it might be prosecuted, *Ex p. Grant*, 1 Glyn & J. 17. *Ex p. Downes*, 1 Rose, 398. *Ex p. Staff*, *Buck*, 431, 249. see *Ex p. Warwick*, 4 Mad. 262, *semb. cont.*, the court upon petition would supersede it. But whether the court will now adhere strictly to these decisions, since the bankrupt, by stat. 6 Geo. 4. c. 16. § 6 (*ante*, p. 47), may, by filing a declaration of insolvency, procure himself to be declared a bankrupt, and thus do that directly and legally, which he was heretofore prevented from doing indirectly, remains to be determined. Wherever it appears that, with a view to impose upon the Great Seal, a commission has been taken out, upon fabrications of negotiable paper, the Court will direct the Attorney General to take such steps for the prosecution of the parties as the case may require. *Ex p. Emery*, *Buck*, 422. and see *Ex p. Kershaw*, 6 Ves. 2.

6. Wherever a fraud has been practised upon the court, in the issuing of a commission, the court upon petition will supersede it, however beneficial it may appear to be to the creditors, and will make the parties implicated in the fraud pay the costs. *Ex p. Brookes*, *Buck*, 257. *Ex p. Boyle*, *Id.* 247. *Ex p. Buttier*. *Id.* 426. *Ex p. Thorpe*, 1 Ves. 394.

7. If a commission be sued out to effect a particular purpose, foreign to the legitimate object of a commission, as to effect a

dissolution of partnership, *Ex p. Browne*, 1 *Rose*, 151, or to determine a lease, *Ex p. Gallimore*, 2 *Rose*, 484, or to force the bankrupt to a compromise, *Ex p. Harcourt*, 2 *Rose*, 203, or the like, particularly if there be any fraudulent motive mixed up in it, *Ex p. Wilbeam*, *Buck*, 459, 5 *Mad.* 1, the court will in general supersede it, whether such purpose can or not be otherwise defeated. *Ex p. Bourne*, 2 *Glyn & J.* 137. But the court will not supersede a commission taken out with the intent and purpose of operating as a commission, though the intention be also to defeat an action. *Ex p. Bourne*, *ut supra*. And it is no objection to a commission, that it was sued out with intent to defeat a previous execution, if no collusion appear upon the part of the bankrupt; *Menham v. Edmonson*, 1 *B. & P.* 369. *Ex p. Edmonson*, 7 *Ves.* 303. *Ex p. Gardner*, 1 *Rose*, 377, 1 *V. & B.* 45. *Ex p. Arrowsmith*, 14 *Ves.* 209; for one of the principal objects of a commission of bankruptcy is, to prevent the property from being swallowed up by any one of the trader's creditors, and to have it fairly distributed amongst all.

8. If a commission be sued out by one of several creditors, in breach of good faith towards the others, the court will in general supersede it. See *Ex p. Lowe*, 1 *Glyn & J.* 78.

9. If the bankrupt have paid all his creditors their full demands, with interest, the court upon his petition will award a *supersedeas*. See *Ex p. Bryant*, 2 *Rose*, 1, 1 *V. & B.* 211.

10. And even where the bankrupt has not paid his creditors their full demands, yet if all the creditors who have proved upon the estate consent to the commission being superseded, the Lord Chancellor upon petition will supersede it. *Ex p. Duckworth*, 16 *Ves.* 416. But by Ord. Eldon, 21 August, 1818, no commission shall be superseded, on the grounds of such consent having been given, until after the second meeting; and the commissioners, on being satisfied at the second meeting that a petition will be presented for superseding the commission, with the consent of all the creditors who shall have proved debts, shall in such case adjourn the choice of assignees to some future day, in order to give the opportunity of presenting such petition for a *supersedeas* in the manner hitherto accustomed. And in a case where all the creditors consented to the *supersedeas*, except one, who had died insolvent, and whose son was ready to consent, and all the commissioners, save one, were dead; it was ordered, on petition, that the surviving commissioners certify to the Chancellor the names of the creditors who had proved, and that the son of the deceased creditor might be allowed to consent to the *supersedeas*. *Ex p. Wallis*, 2 *Glyn and J.* 25.

And now, by stat. 6 Geo. 4. c. 16. § 133. it is enacted, that at any meeting of creditors after the bankrupt shall have passed

his last examination, (whereof, and of the purport of which, twenty-one days notice shall have been given in the London Gazette,) if the bankrupt or his friends shall make an offer of composition, or security for such composition, which nine-tenths in number and value of the creditors assembled at such meeting shall agree to accept, another meeting for the purpose of deciding upon such offer shall be appointed, whereof such notice as aforesaid shall be given ; and if at such second meeting nine-tenths in number and value of the creditors then present shall also agree to accept such offer, the Lord Chancellor shall and may, upon such acceptance being testified by them in writing, supersede the said commission.

And by sect. 134, in deciding upon such offer as aforesaid, any creditor whose debt is below twenty pounds shall not be reckoned in number, but the debt due to such creditor shall be computed in value ; and that any creditor to the amount of fifty pounds and upwards, residing out of England, shall be personally served with a copy of the notice of the meeting to decide upon such offer as aforesaid, and of the purpose for which the same is called, so long before such meeting as that he may have time to vote thereat ; and such creditor shall be entitled to vote by letter of attorney, executed and attested in manner hereby required for such creditor's voting in the choice of assignees ; and if any creditor shall agree to accept any gratuity or higher composition for assenting to such offer, he shall forfeit the debt due to him, together with such gratuity or composition ; and the bankrupt shall (if thereto required) make oath before the commissioners that there has been no such transaction between him or any person with his privity, and any of the creditors, and that he has not used any undue means or influence with any of them to attain such assent as aforesaid.

And by *Ord. Eldon, 27 June, 1826*, at the first of the said meetings a minute must be taken by the solicitor of the assignees, of the names of the several creditors present, and the amount of their several debts standing in proof upon the proceedings, distinguishing such of them as shall assent to such composition ; and the second of the said meetings must be held at a meeting of the commissioners named in each respective commission ; and that at such meeting the commissioners by deposition of witnesses and documentary evidence, as to them shall appear to be proper, must enquire and ascertain whether the several particulars directed by the said act to be performed, previous to the holding of such second meeting, have been duly performed, and certify the same to the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal, together with the proceedings which shall have taken place at

such second meeting ; and the commissioners must also state in such certificate, what proportion in number and value the creditors assenting to such composition bear to the creditors who shall have proved debts of the amount of £20, and upwards, under the commission ; and also whether any sale has been made of the bankrupt's estate, in order that provision may, if expedient, be made for confirming the same. *See the form of the certificate, ii. p. 148, post.*

11. But there is no instance of the court's superseding a commission, merely because it was to be opened at a place at a great distance from the residences of the main body of the creditors. *Ex p. Fellows, 2 Mad. 141.* Nor will the court award a *supersedeas* upon the petition of a creditor, where purchases have been made under the commission ; *Ex p. Edwards, 10 Ves. 104* ; nor upon the petition of the bankrupt in such a case, unless there be affidavits that the bankrupt has joined in or confirmed all the conveyances made by the assignees. *Ex p. Milner, 19 Ves. 204.* So, even where the bankrupt had paid his creditors 20s. in the pound, and obtained his certificate, the court refused a *supersedeas*, without the consent of the creditors. *Ex p. Jackson, 8 Ves. 533.* So, it has been refused, when applied for on the ground that the petitioning creditors were partners, and one only had signed the bond to the Lord Chancellor. *Ex p. Hodgkinson, Coop. 99. and see ante, p. 60.* So, it is usually refused to the bankrupt, after long acquiescence by him, without a trial at law. *Ex p. Kirk, 15 Ves. 464. Vide post, p. 226.*

*When.]* A petition to supersede a commission, with the consent of the creditors, cannot be presented until after the second meeting, *Ord. Eld. 21 August, 1818, supra*, that is to say, the first meeting for the proof of debts ; *Ex p. Law, 4 Mad. 273* ; or if the application be made under the statute, (*see* § 133, 134, *supra*,) not until after the last examination and the two meetings required by the statute. Nor will the court entertain an application for a *supersedeas*, in any case, until after the commission has been sealed. *Ex p. Williams, 2 V. & B. 255.*

Where the *supersedeas* is applied for, on the ground of the bankrupt's not being a trader, or of there being no petitioning creditor's debt, or no act of bankruptcy,—as the petition in this case is in the nature of an appeal from the decision of the commissioners, the court cannot entertain the application, unless there have been an adjudication. *Ex p. Lancaster, 17 Ves. 512. Ex p. Hague, 1 Rose, 150. Ex p. Foster, 1 Rose, 49, 17 Ves. 414.* But a petition for a *supersedeas*, on the ground of fraud, may be presented before adjudication ; *Ex p. Battier,*

*Buck*, 426 ; or the petitioning creditor may apply for a *supersedeas* before the commission is opened, provided the bankrupt have been previously served with the petition. *Re ———*, 1 *Glyn & J.* 23. *Ex p. Prowse*, *Id.* 92.

In general, a petition for a *supersedeas* on the part of the bankrupt, or on the part of the bankrupt and others, cannot be presented until after he has surrendered, *Ex p. Wilkinson*, 1 *Glyn & J.* 387. *Ex p. Jones*, 11 *Ves.* 409, unless he have been prevented from surrendering by accident, or the like. See *Ex p. Whittington*, *Buck*, 235. But as a bankrupt is not bound to surrender before the forty-second day, or last public meeting, his not having surrendered is no objection to his petition for a *supersedeas* presented before that period ; *Ex p. Nicholls*, 2 *Glyn & J.* 101 ; and the petitioning creditor may petition for a *supersedeas* before the surrender of the bankrupt ; *vide supra* ; and even after adjudication, if the bankrupt be out of the country, or the like. See *Ex p. Hopkins*, 1 *Rose*, 228.

But a *supersedeas* will not in general be awarded, after the bankrupt has obtained his certificate : not at the prayer of a creditor, except for fraud, *Ex p. Moule*, 14 *Ves.* 602, or unless the invalidity of the commission appear clearly upon the face of the proceedings : *Ex p. Poole*, *Cox*, 227. *Ex p. Levi*, *Buck*, 75. and see *Ex p. Cutten*, *Buck*, 68 : not at the prayer of the bankrupt, unless the commission have been decided to be invalid, and the title of the assignees successfully resisted, in an action at law, *Ex p. Bass*, 4 *Mad.* 270, or the like.

Nor will the court award a *supersedeas*, either upon the part of the bankrupt, *Ex p. Abell*, 1 *Glyn & J.* 199, or on the part of the creditors, *Ex p. Cutten*, *Buck*, 68. *Ex p. Moule*, 14 *Ves.* 602, if the bankrupt or creditors respectively have long acquiesced in the commission.

*How.]* Where a commission is supersedeable for want of prosecution, under Lord Loughborough's order (*see ante*, p. 221. 64), it may be superseded, as of course, upon application at the bankrupt office, by any person but the bankrupt ; but if the bankrupt would apply for a *supersedeas* for such a cause, he must present a petition in the regular way. *Ex p. Gale*, 1 *Glyn & J.* 43. The mode of proceeding in all other cases, also, is by petition. Even if a commission be supersedeable for two causes, one of them being for want of prosecution under Lord Loughborough's order above mentioned, a creditor may apply by petition to the court for a *supersedeas*, although he might have obtained the order for it, as of course, for the latter cause, upon mere application at the bankrupt's office. *Ex p. Lowe*, 1 *Glyn & J.* 78.

The petition may be preferred by the bankrupt himself, or by the assignees, or by any of the creditors.

The bankrupt may apply to supersede his commission, even although under a commitment by the commissioners for not answering, &c. ; but in this latter case he must have the consent of the creditors to the *supersedeas*. *Ex p. Brown*, 2 Swanst. 290. *Ex p. Magennis*, 1 Ross, 60, 18 Ves. 289. And he may petition in *forma pauperis*. *Ex p. Northam*, 2 Ross, 140. 2 V. & B. 124. But if there have been purchases under the commission, the application must be accompanied with affidavits that the bankrupt has joined in or confirmed the conveyances of the assignees, *Ex p. Milner*, 19 Ves. 204, and *ante*, p. 225, or at least the court will make that one of the conditions of their awarding the writ. And as the bankrupt can try the validity of the commission, at any time, by action, the court often in doubtful cases leave him to that remedy, and refuse the *supersedeas* until after the trial. It has been decided also, that a person attainted of felony cannot be heard by petition to the Lord Chancellor to supersede a commission of bankruptcy issued against him, whether his attainder arose out of the commission, or not. *R. v. Bullock*, 1 Taunt. 82.

The assignees may apply to supersede the commission, even for defects appearing upon the face of the proceedings : but such an application will be watched with great jealousy ; and the assignees must first do all in their power to clear away the doubts as to the validity of the commission, before they apply. *Ex p. Graves*, 1 Glyn & J. 86. Where assignees, being satisfied that the evidence on the proceedings of the act of bankruptcy, &c. would not support the commission, if contested, applied to the petitioning creditor, and pressed him to produce such other evidence before the commissioners as would support it, saying that in the event of his not doing so, they should be obliged to petition to supersede the commission, and at his costs ; but the petitioning creditor took no notice of these applications of the assignees : the Lord Chancellor held that it was competent to the assignees to petition for a *supersedeas* in such a case, but he referred it in the first place to the commissioners to call a meeting for the purpose of receiving information from the petitioning creditor, and upon the sufficiency or insufficiency of that should depend the awarding of the *supersedeas*. *Id.*

A creditor may apply to supersede the commission, even although privy to the very act on which he grounds his objection to the commission. *Ex p. Brine*, Buck, 19, 108. The petition must allege him to be a creditor ; it is not sufficient that that fact is stated in the affidavits. *Ex p. Oxley*, 1 Glyn & J. 12.



A creditor may petition for a *supersedeas*, although he has not proved under the commission; for his claim to supersede is adverse to the commission: but his having proved will not preclude his petitioning for a *supersedeas*. *Ex p. Bonsor*, 2 *Ross*, 61. *Malkin v. Adams*, *Id.* 33. But the petitioner must shew himself to be a creditor, by swearing to his debt, either under the commission, or in support of the petition; *Anon.* 2 *Mad. errata* viii.; and he must be a creditor at the time his petition is actually heard; for if a creditor, suing at law, petitions for a *supersedeas*, and he recovers at law, and fixes the bail who pays the debt, before the petition comes on for hearing, the petition cannot be heard. *Ex p. Parry*, *M S.*

So, it has been decided, that the plaintiff in an action, in which an attorney, the bankrupt, had been attached for not putting in bail in pursuance of his undertaking, had a sufficient interest to enable him to petition to supersede the commission. *Ex p. Bold*, *Cox*, 423.

As to the petition itself, and the practice relating to it, see the next section. If it be a petition with the consent of the creditors, the consent is written at the foot of it, and must be signed by all the creditors who have proved. An affidavit must be made of the signature of the creditors, and laid, together with the petition, before the commissioners; and the commissioners then, having first ascertained that all the creditors have signed the consent, will sign a certificate to that effect, which must accompany the petition when presented. See the form of the petition, ii. p. 143; of the consent, ii. p. 144; of the affidavit, ii. p. 144; and of the commissioners' certificates, ii. p. 145.

If, upon the hearing, the matter appear clear, the court will at once decide upon the petition and affidavits, without directing an issue to try the validity of the commission, even although the petitioning creditor should be desirous of trying it. *Ex p. Gallimore*, 1 *Mad.* 67. *Ex p. Gulston*. 1 *Atk.* 193. *Ex p. Wilson*, *Id.* 217. Where the act of bankruptcy on the proceedings appeared to be insufficient, and there was no affidavit of any other act which would support the commission, and no question raised which could make a trial at law useful, the court superseded the commission without an issue. *Ex p. Burgess*, *Buck*, 233. Even where the trading, petitioning creditor's debt, and act of bankruptcy, on the face of the proceedings, appear sufficient, yet if the court be satisfied of the insufficiency of any of them, from the affidavits, it will supersede the commission, without an issue. *Ex p. Gallimore*, 2 *Ross*, 234. But if the court have any doubt of the facts of the case,—then, if the *supersedeas* have been applied for by a creditor, an issue will be directed, to try the validity of the commission; but if it have been

applied for by the bankrupt himself, the court will not, in general, (unless under particular circumstances, *see Ex p. Collins*, 1 *Rose*, 373,) direct an issue, because the bankrupt can at any time bring an action to try the validity of the commission; *Ex p. Nutt*, 1 *Atk.* 102; if the bankrupt, however, bring an action, and thereby establish the invalidity of the commission, the court will immediately grant the *supersedeas*, and will not delay doing so until after another trial, unless under very special circumstances. *Ex p. Dick*, 1 *Rose*, 51. Or if, in any case, upon a petition for a *supersedeas*, it appear that an action has been already commenced, to try the validity of the commission, the court will retain the petition, and defer the consideration of it until the event of the trial at law be known. *Ex p. Price*, *Buck*, 230, 3 *Mad.* 228.

Upon directing an issue, the court will state the terms of it in the order, and direct who are to be made plaintiff and defendant, what shall be deemed admissible as evidence, and who shall be examined as witnesses, &c.; *see Ex p. Carter & al.* 1 *Glyn & J.* 326; and if any other act of bankruptcy than what is stated on the proceedings, is to be allowed in evidence, to support the commission, the defendant will be ordered to give a notice to the plaintiff of the acts on which he relies, and of the evidence by which he intends to prove them, in order that the latter may not be taken by surprise. *Ex p. Bogen*, *Buck*, 137. When the issue is ordered, the court will order the petition to stand over to a particular day, so as to give time for the issue to be tried in the mean time; and if the plaintiff do not proceed to the trial before that time, or account satisfactorily for his not having done so, the court will decide against him. *Ex p. Ranken*, 3 *Mad.* 371. When the issue is tried, the court will immediately award *supersedeas*, or dismiss the petition, according to the result of the trial; and it will not direct another issue or trial, unless for very special reasons. *See Ex p. Prosser*, *Buck*, 77. *Ex p. Bryant*, 2 *Rose*, 1.

Care must be taken that the *supersedeas* correspond with the commission, in the names and descriptions of the bankrupt and the petitioning creditors; a variance in this respect would be fatal. *Matthews v. Dickinson*, 1 *Moor*, 104. *See the form of the writ*, ii. p. 150.

Lastly, an advertisement of the commission being superseded, must be inserted in the Gazette. *See the form*, ii. p. 151.

*Its effect.*] The *supersedeas* renders the certificate and all the proceedings had under the commission, of no effect, *Everett v. Backhouse*, 10 *Ves.* 94, and the estates conveyed to the assignees

are thereby divested. *Ex p. Bowler, Buck, 358. Ex p. Smith, Buck, 262, n.* But by stat. 6 Geo. 4. c. 16. § 87, the titles to property sold under a commission, shall not be impeached, "unless the bankrupt shall have commenced proceedings to supersede the said commission, and duly prosecute the same, within twelve calendar months from the issuing thereof;" *ante, p. 179*; and we have seen that in all cases where a *supersedeas* is applied for by the bankrupt, the inconvenience likely to arise in this respect is obviated, by making the bankrupt join in or confirm the conveyances of the assignees. *See ante, p. 227.* And by sect. 16, where a joint commission is sued out against two or more persons, it may be superseded as to some, and stand good as to the others; in which case the latter's certificate will not be affected by the *supersedeas*. *See post, Ch. 2.* Lastly, by sect. 59, where a creditor abandons proceedings in any action or suit for his debt, and elects to prove under the commission, if the commission be afterwards superseded, he "may proceed in the action as if he had not so elected, and in bailable actions shall be at liberty to arrest the defendant *de novo*, if he has not put in bail below, or perfected bail above, or if the defendant has put in or perfected such bail, to have recourse against such bail, by requiring the below bail to put in and perfect bail above within the first eight days in term after notice in the London Gazette of the superseding such commission, and by suing the bail upon their recognizance, if the condition thereof is broken." *Ante, p. 111.*

Upon a commission being superseded, a new commission may be sued out against the same trader; and this may be done immediately after the court has pronounced its decision, and before any order be actually drawn up. *Ex p. Bower & al., 1 Glyn & J. 262.*

*Procedendo.*] If a writ of *supersedeas* have been awarded where it ought not, it may be rendered ineffective by awarding a writ of *procedendo*. The petition for a *procedendo* is in the nature of a petition for a rehearing, or an appeal: if the *supersedeas* have been awarded by the Lord Chancellor, the *procedendo* must also be awarded by him, and not by the Vice Chancellor; *Ex p. Crump, Buck, 3*; if the *supersedeas* be awarded by the Vice Chancellor, either he or the Lord Chancellor may award a *procedendo*; but if the *supersedeas* have been awarded by the Vice Chancellor, and his order be confirmed by the Lord Chancellor, the Vice Chancellor cannot hear a petition for a *procedendo*, unless the Lord Chancellor direct him to do so. *Ex p. Hurd, Buck, 45.*

The effect of the writ of *procedendo*, is to place every thing

in the same situation precisely, as if the *supersedeas* had not been awarded and issued. *Semb. see Ex p. Bowler, Buck, 358. See the form of the writ, ii. p. 152.*

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## SECTION XVII.

### *Petitions.*

*In what cases.]* Every application to the Lord Chancellor, in cases of bankruptcy, whether it be an original application, or an application by way of appeal from a decision of the commissioners, must be by petition, and not by bill. Even where creditors who had proved under a commission, brought an action, the court upon petition granted an injunction, restraining them from proceeding in it, or permitting their names to be used for the purpose. *Ex p. Grant, Buck, 90.* Where the assignees filed a bill to restrain the bankrupt from further proceedings at law to impeach the commission, it was holden bad on demurrer, the remedy being by petition. *Kirkpatrick v. Dennett, 1 Glyn & J. 300.* So, a bill filed against a bankrupt and his assignees, questioning the validity of the commission and praying an account, or if the commission were legal, then praying for leave to prove what should appear to be due under the bankruptcy, was holden bad on demurrer, the proper mode of questioning the validity of a commission being by petition. *Bailey v. Vincent, 5 Mad. 48.* So, a bill filed by assignees against a creditor, for a discovery, and to have the proof of his debt expunged, was holden bad on demurrer, the course of proceeding being by petition. *Clarke v. Capron, 2 Ves. 666.* So, a bill filed by a bankrupt (who was afterwards discharged as an insolvent), and his assignee under the insolvent act, against his assignees under the commission and others, charging collusion and improper conduct, and that all or most of the creditors under the commission were satisfied, and praying an account, was holden bad on demurrer, the mode of proceeding in such a case being by petition. *Paxton v. Davis, 1 Rose, 79.* Even if the assignee wish to become a purchaser of any part of the bankrupt's estate, he must petition for leave to do so, and serve the other assignees and the bankrupt with the petition. *Ex p. Page, 4 Mad. 459.* So, the remedy against an assignee for the amount of a dividend declared, is by petition. *6 Geo. 4. c. 16. § 111, ante, p. 214.* Even after the commission is superseded, a purchaser may pe-

tion to have money, lodged by him as a deposit at sale of the bankrupt's property, returned to him by the assignee. *Ex p. Fector, Buck, 428.*

But the court have no jurisdiction to appoint a receiver, upon a petition in bankruptcy. *Ex p. Tupper, 1 Rose, 179.* Nor can the assignee proceed by petition, against a person not claiming under the commission. *Ex p. Pease, 19 Ves. 46.* And a petition to remove a bankrupt assignee, is unnecessary, as this may be done upon mere application to the commissioners. *Ante, p. 118. Ex p. Watts, 1 Rose, 436.*

In all cases, where the petition is in the nature of an appeal from the decision of the commissioners, such as for leave to prove a debt, *Ex p. Wright, 2 Ves. 41. Ex p. De Tastet, 1 V. & B. 280,* or to have the accounts of the assignees taken, *Ex p. Brocksopp, Buck, 304,* or the like, the application must be made in the first instance to the commissioners, and if the party be dissatisfied with their decision, he may then petition the Lord Chancellor. And the commissioners, in such cases, should never decline to act, merely for the purpose of having a petition presented, in order to get the opinion of the Chancellor upon the subject. *Anon. 13 Ves. 590.*

*By whom.*] A petition may be presented by the bankrupt, by his assignees, or by any of his creditors, whether they have proved or not. *Vide ante, p. 227, 228, and see Bailey v. Vincent, 5 Mad. 48. Ex p. Dodson, Buck, 225.* Even a stranger may petition, if he be sufficiently interested in the subject of the petition, and the petition concern the bankruptcy; as for instance, a person who has purchased some of the bankrupt's property from the assignees, at a sale, and paid the deposit upon it, may petition to have that deposit returned to him, upon the bankruptcy being superseded. *Ex p. Fector, Buck, 428.*

But the court have refused to stay a bankrupt's certificate, upon the petition of a creditor who had not proved, and who had the means of trying the validity of the certificate in an action at law. *Ex p. Dodson, Buck, 225.* So, the court have refused to institute inquiries into the conduct of the assignees and the solicitor, upon the petition of the bankrupt, unsupported by any of the creditors, where he had no pecuniary interest in the event; such an application should be made by some one interested in the estate, and capable of paying costs. *Ex p. Harrison, Buck, 246.*

The bankrupt may petition *in formá pauperis*, *Ex p. Northam, 2 V. & B. 124.*

As to the parties to a petition for a *supersedeas*, see *ante, p. 227.*

*Within what time.]* A petition to stay a certificate, must be presented on or before the day appointed for the allowance. An application on that day, that a petition, prepared but not properly signed, should be received on the day but one after, and be considered as presented on the day appointed for the allowance, has been refused. *Ex p. Emmett*, 1 *Mad.* 111. Even where the certificate was suspended by a petition presented to stay it, another petition, presented during its suspension, but after the day appointed for the allowance, was dismissed with costs. *Ex p. Wright*, 1 *Glyn & J.* 352.

A petition to supersede a commission, with the consent of the creditors, cannot be presented until after the second meeting. *Ante. p.* 223. Nor can the bankrupt petition, at least he cannot petition to supersede a commission, until after he have surrendered. *Ante, p.* 226. Nor can a petition to supersede be entertained in any case, until after the commission has been sealed. *Ex p. Williams*, 2 *V. & B.* 255. Nor can any petition be presented until the subject of the petition exist ; and therefore a creditor cannot petition to stay the certificate, until after the bankrupt has undergone his last examination. *Semb. Ex p. Goome, Buck*, 40. So, where a petition is in the nature of an appeal from a decision of the commissioners, the subject must have been submitted to them, and their decision obtained, before you can present your petition. *Ante, p.* 232, 225.

But with these exceptions, there is no time actually limited for petitioning ; you may present a petition in a case of bankruptcy, even after the commission has been superseded. See *Ex p. Fector, Buck*, 428. The only general rule upon the subject is, that a petition must be presented without any unnecessary delay. Where a petition to prove, and stay the certificate, was presented eight months after the issuing of the commission and the delay was not accounted for, it was dismissed with costs. *Ex p. Smith, Glyn. & J.* 195. So, the court will not entertain a petition for *supersedeas*, either upon the part of the bankrupt or the creditors, where they have long acquiesced in the commission. *Ex p. Abell*, 1 *Glyn & J.* 199. *Ex p. Cutten, Buck*, 68. *Ex p. Moule*, 14 *Ves.* 602. *Ante, p.* 226.

As to the time within which a petition for a *supersedeas* must be presented, see *ante, p.* 225.

*The Petition.]* The petition is entitled in the bankruptcy, and directed in all cases " To the Right Honourable the Lord Chancellor of Great Britain." It states the issuing of the commission, and such of the proceedings as may be necessary. It must then state, with certainty and precision, all the facts and

circumstances upon which the prayer is founded. And lastly follows the prayer, which must state specifically what the petitioner desires, and then this general clause is usually added, "or that your lordship will please to make such order in the premises, as to your lordship shall seem meet."

The petition must be correctly intitled in the bankruptcy. And therefore, where there was a separate and joint commission it was holden that no order could be made upon a petition to supersede the separate commission intitled in the joint commission only; the court, however, allowed the matter to stand over, with liberty to amend the title. *Ex p. Mills, Buck*, 230.

The statement should contain all the facts and circumstances necessary to enable the court to decide whether the prayer of the petition should be granted or not. And in cases where the petition is in the nature of an appeal from a decision of the commissioners, it must state, not only the facts and circumstances which were laid before the commissioners, and the commissioners decision, but also the grounds or reasons for the decision, as given by the commissioners. *Ex p. Schmaling, Buck*, 94. *Ex p. Wilson, Cox*, 308. *Ex p. Curtis, 1 Ross*, 274. The statement also should not be double; you cannot, for instance, in the same petition, pray for distinct orders under several commissions. See *Ex p. Wilson*, 18 *Ves.* 439. So, a petition to expunge the proofs of various creditors, has been dismissed, as being multifarious. *Ex p. Coles, Buck*, 256. But a petition may be framed in the alternative,—either for a *supersedeas*, or or a removal and new choice of assignees,—or the like; and it is only under special circumstances that the court will call upon the petitioner to elect. *Ex p. Scholey Buck*, 476.

The prayer should state specifically what is required by the petitioner; and that relief only should be prayed for, which the court usually grants in similar cases. In cases where the petition is in the nature of an appeal from the commissioners' decision, you can pray only that which was asked of the commissioners; for otherwise it would not be an appeal from their judgment. And therefore it has been holden that a creditor cannot petition for leave to prove for a greater sum than he offered to prove before the commissioners. *Ex p. Fry, 3 Mad.* 132.

By *Ord. Eldon*, 12th August, 1809, all petitions in bankruptcy, presented for hearing, shall, before they are presented, be respectively signed by the petitioners: except in cases of partnership or absence from the kingdom: in the former of which cases, the signature of one of the partners is to be deemed sufficient; and in the latter case, the petition is to be signed by the person presenting the same, on behalf of the person so

abroad. And it is further ordered that the signature of each person signing as a petitioner, shall be attested by the solicitor actually presenting the petition, or by some person who shall state himself, in his attestation, to be the attorney, solicitor, or agent of the party signing in the matter of the petition.

And this order will not be dispensed with, unless under very special circumstances, verified by affidavit. *Anon.* 1 *Ross*, 97. Under particular circumstances, indeed the court have allowed an agent in town, to sign a petition for his principal in the country, the agent undertaking to be answerable for the costs. *Re Boldero*, 1 *Ross*, 231. *Ex p. Stone, Buck*, 255. It was holden in one case, that the above order was sufficiently complied with, by the signature of the petitioner being "authenticated," not "attested," by his solicitor, who had not witnessed the signing, but put his name to it from a knowledge of the petitioner's hand writing; the object of the order being to secure the responsibility of a solicitor to the propriety of the application. *Ex p. Titley*, 2 *Ross*, 83. And where the petition was "attested" by the solicitor's agent, and "authenticated" by the solicitor, it was holden sufficient. *Ex p. Bellott*, 2 *Mad.* 259. But it has since been holden, that is not a sufficient compliance with the above order, that the petitioner's signature be "authenticated" by his solicitor, it must be "attested." *Ex p. Bury, Buck*. 394. *Ex p. Dumbell*, 2 *Glyn. & J.* 121. And where the petition was attested by the solicitor's agent it was dismissed with costs. *Ex p. Hirst*, 1 *Glyn & J.* 76, *Ex p. Weston*, 1 *Mad.* 75. Where the person attesting the petitioner's signature described himself as "his solicitor," and not as his solicitor or agent in the matter of the petition, and in fact he was but a clerk to the attorney who presented the petition: the attestation was holden bad. *Ex p. Wilkinson*, 1 *Glyn. & J.* 353. But where the petition was actually attested by the solicitor, although he was not described as such,—as where it purported to be signed "in the presence of T. L. master extraordinary in chancery,"—the court, on payment by the petitioner of the costs of the day, allowed it to stand over, for the purpose of amendment, and of an affidavit being filed shewing that T. L. at the time of the signature was the petitioner's solicitor or agent. *Ex p. Rawlinson*, 1 *Glyn & J.* 19. It is no objection, however, that the solicitor who attests a petition, is a prisoner. *Ex p. Thompson*, 1 *Glyn. & J.* 308. Nor is an attestation at all necessary, where the solicitor presents a petition on behalf of himself only. *Ex p. Kingdon*, 1 *Mad.* 446.

A petition by several assignees must be signed by all of them; they do not come within the meaning of the clause



in the above order, relating to partners. *Ex p. Morgan, Buck, 109.*

If there be any defect in a petition, which may be remedied by amendment, the court will in general let the case stand over, and allow the petition to be amended ; usually upon payment of the costs of the day. *See Ex p. Peyron, 2 Rose, 368. Ex p. Mills, Buck, 280. Ex p. Rawlinson, 1 Glyn and J. 19. Ex p. Row, 1 Mad, 309, and see Ex p. Kirk, Buck, 478.*

Engross the petition upon plain paper; *see the forms, ii. p. 155. &c.* : and leave it at the bankrupt office, to be answered. A petition to stay the certificate, once presented, cannot be withdrawn without the leave of the court, and then only upon an affidavit shewing it is not withdrawn from any improper motive. *Ex p. Gibson, 6 Ves. 5.*

If after filing a petition, the petitioner himself become bankrupt, his assignees, if they would have the benefit of the petition, must file a supplemental petition, otherwise the first one will be dismissed. *Ex p. Birdwood, Buck, 99.* So, if the petitioner die, the petition must be received by his personal representative. *See Ex p. Whittington, Buck, 235.*

*Service of it.]* A copy of the petition must be served upon the party or parties, whose duty or interest it is to oppose it if necessary. A petition to stay the certificate, must be served personally upon the bankrupt ; *Ex p. Harford, Buck, 38 ;* and if not served before the petition day, the course is for the Bankrupt to present a short petition, praying to have his certificate allowed, with costs, if opposed. *Ex p. Moor, 1 Glyn & J. 253.* It must be personally served on the bankrupt, two clear days at least before the petition day, otherwise it will be dismissed with costs. *Ex p. Hopley, 1 Glyn & J. 63, 2 Jac. & W. 220. Ex p. Coulbourne, 2 Rose, 187. Ex p. Halford, Buck, 38. Ex p. Kendall, 1 V. & B. 543. Ex p. Brenchley, Coop. 97.* So, a petition to supersede a commission, if presented by a creditor, must be personally served upon the bankrupt. *Ex p. Barber, Buck, 493,* whether the commission have been opened or not ; *Anon. 1 Glyn & J. 23 ;* if presented by the bankrupt, it must be served on the assignees ; and in all cases, it must be served on the petitioning creditor. Also, it has been ruled that a petition to supersede a second commission, must be served on the assignees under the first. *Ex p. Irvine, 1 Mad. 74.* If an assignee petition for leave to bid for or purchase part of the bankrupt's property, the other assignees and the bankrupt must be served with the petition. *Ex p. Page, 4 Mad. 459.*

Nor will a personal service on the bankrupt be waived by

his taking copies of the affidavits, *Ex p. Kendall*, 1 V. & B. 543, or by his applying to advance the petition, *Ex p. Groome*, *Buck*, 39, or even by his admitting the receipt of the copy of the petition, *Ex p. Furnival*, 1 Glyn & J. 254, or filing an affidavit in answer. *Ex p. Harford*, *Buck*, 38.

If, however, the party cannot be met with, in order to serve him personally, if he be abroad, or it appears that he keeps out of the way for the purpose of avoiding being served with the petition, the court in general will allow of it being served in some other manner. Upon a petition to expunge a debt proved by a partnership, where the partner who proved the debt was dead, and the other partner resided abroad, the court on motion ordered that service of a copy of the petition on the attorney appointed to receive the dividend, should be deemed good service. *Ex p. Peyton*, *Buck*. 200. *Ex p. Anderson*, *Id.* 38. *Ex p. Palon*, 3 *Mad.* 116. So, where one of two assignees had quitted the country, and the other had petitioned that a new assignee might be chosen in his stead, &c., and an affidavit was made of the service of the petition at the last place of residence of the absent assignee: the court made an order accordingly, and that such service should be deemed good service. *Ex p. Bonbonus*, 3 *Mad.* 23. And where a witness was ordered, upon petition, to attend before the commissioners, upon an affidavit by the messenger that, after using the greatest diligence, he had been unable to find the witness, and that he believed she was secreted, the court ordered that service at the house where she resided when she was first summoned, should be deemed good service: *Ex p. Bowler*, *Buck*, 358. And this application to the court, must be made in time, so that this special service may be made within the time limited for the common and ordinary service: and therefore where such an application, as to the service of a petition to stay the certificate, was not made until the petition day, the court refused it, unless it could be shewn that an earlier application was prevented by the conduct of the party to be served. *Ex p. Harrison*, 1 *Glyn & J.* 71.

An affidavit must be made of the service, and filed before the petition is heard. *Ex p. North*, 4 *Mad.* 395. Where a defective affidavit of service was produced at the hearing, and also a supplemental affidavit to remedy the defect; and the petition was directed to stand over, to give the bankrupt an opportunity of answering this latter affidavit: it appearing afterwards that this latter affidavit had not been filed at the time it was produced at the hearing, although filed before the day to which the case was adjourned, the court dismissed the petition with costs. *Ex p. Long*, 1 *Glyn & J.* 351.

*Affidavit in support of it.]* An affidavit or affidavits, in proof of the facts stated in the petition, must be filed at the bankrupt office. The affidavit should in general be positive, stating such facts only as are within the deponent's knowledge: swearing merely to hearsay information and belief will not be sufficient, unless indeed the case be pregnant with circumstances of suspicion, *Ex p. Coles, Buck*, 242, or that the party from whom the information was received, has refused to make an affidavit; *Ex p. Stevens*, 4 *Mad.* 26; otherwise, it seems such an affidavit need not be answered.

It must be sworn before a master ordinary or extraordinary, in chancery. It must not, however, be sworn before the solicitor to the commission, *Ex p. Brockhurst*, 1 *Rose*, 145, or his clerk, *Ex p. Green*, 1 *Glyn & J.* 16, otherwise it cannot be read; but the court, in such a case, have allowed the petition to stand over, in order that the affidavit might be resworn,

It must not be sworn or filed, until after the petition has been answered; otherwise it cannot be read. *Ex p. Northwood*, 2 *Rose*, 246. *Ex p. Parks, Buck*, 332. Affidavits in support of a petition to stay a certificate, are the only exception to this: for by *Ord. Loughb.* 12th April, 1796, it is ordered that all affidavits to be made in support of petitions presented against the allowance and confirmation of bankrupts' certificates, be filed in the office of the secretary of bankrupts, at the time such petitions are left at the office against the allowance of bankrupts' certificates as aforesaid; and that no petition be received against the allowance of any bankrupts' certificate, unless the affidavits in support of such petition be filed in the said office at the time such petitions are so left, and in default thereof that such certificates be then forthwith allowed and confirmed. And by *Ord. Eldon*, 16th November, 1805, it was ordered and directed that from thenceforth the affidavits to be made use of at the hearing of any petition to stay a bankrupt's certificate on the part of the petitioner, shall be brought into the office of the secretary of bankrupts, together with the petition, (save and except such affidavits as shall be necessary to be made in reply to any affidavits made in answer to such petition). See *Ex p. Bowes*, 11 *Ves.* 540. *Ex p. the Royal Bank of Scotland*, 1 *V. & B.* 5. *Ex p. Overton*, 2 *Rose*, 257. If filed after the petition, they cannot be read. *Ex p. Dodson, Buck*, 178. An irregularity, however, in the filing of petitions, may be waived by the other party filing affidavits in answer, *Ex p. Gilpin*, 1 *Glyn & J.* 183, particularly if he were apprized of the irregularity at the time. *Ex p. Bury, Buck*, 393. *Ex p. Smith, Id.* 395.

The affidavit must be filed, however, before the petition day. 2 *Rose*, 161. Yet if they have not been so filed, the court will

in general allow the case to stand over until the next day of petitions, in order to give the respondent an opportunity of answering them, upon payment of the costs of the day by the petitioner. *Ex p. Peel, Buck, 394, and see Ex p. Sparrow, 2 Mad. 184.*

*Affidavits in answer.]* The parties served with the petition, may file affidavits in answer. And these also must be filed before the petition day; otherwise the petitioner will be entitled to have the petition stand over to give him an opportunity of filing affidavits in reply, if he should deem it necessary; *Ex p. Radcliffe, Buck, 489*; and the party guilty of the irregularity, will usually have to pay the costs of the day. *Ex p. Corporation of Doncaster, Buck, 1.*

*Affidavits in reply.]* The petitioner may file affidavits in reply, for the purpose of explaining any matter stated in the affidavits of the other party. *See Ex p. Dodson, Buck, 178.* And they should be confined to this; *see Ex p. Shayle, Buck, 244*; at least, the court will make no order founded upon affidavits in reply, where the petition and affidavits filed with it, have made out no case for it. *Ex p. Cundall, 1 Glyn & J. 37.*

The court will not entertain an application to postpone the hearing of a petition, in order to give the applicant an opportunity of filing affidavits in reply, unless the application be made at least two clear days before the petition appears in the paper. *Ex p. Wiltshire, Buck, 232.*

*The hearing.]* The petition, when filed and answered, is set down for hearing in the paper of petitions, and is afterwards called on in its order. The court will seldom entertain an application for hearing a petition out of its turn, excepting a petition to stay a certificate; *see Ex p. Anderson, 1 Rose, 93*; and before such an application is made, notice of the intention to make it should be given to the opposite party. *Re Bell, 1 Glyn & J. 182.* On the other hand, either party may apply, either by petition or motion, to have the hearing of the petition postponed: in strictness, perhaps, this should be done by petition; but the application by motion is not usually objected to, when supported by affidavit. *See Ex p. Gitton, Buck, 549. Ex p. Parker, Id. 313.* If the motion to postpone the hearing, be not made until the petition is called on, *Anon. 1 Rose, 24*, or until what are usually termed costs of the day have been incurred, the court will make it one of the terms of their granting it, that the applicant shall pay such costs; but the non-payment of such costs will not be admitted as an objection to the hearing of the petition when called on again, unless upon affidavit that they

have been previously demanded. *Ex p. Leech*, 2 Glyn & J. 78, and see post, p. 246. But we have seen (*supra*) that an application to postpone the hearing, in order to give a petitioner an opportunity of filing affidavits in reply, must be made at least two clear days before the petition appears in the paper. *Ex p. Wiltshire*, Buck, 232.

When the petition is called on, if the petitioner appear by his counsel, and the respondent do not, the court will make such order as the facts stated in the petition may warrant. If the respondent appear, and the petitioner do not, the court will dismiss the petition; and in such a case, it is incumbent on the respondent, applying for costs, to produce an office copy of the affidavit of service, before the rising of the court on the day the petition was called on, *Ex p. Astell*, Buck, 396, that being the only proper evidence of the filing of an affidavit. *Ex p. North*, *Ibid.* But if neither the petitioner nor the respondent appear, at the time the petition is called on, the court may then order it to be struck out of the paper. And by an order of the court, dated 11th June, 1817, it is ordered that no petition, struck out of the Vice-Chancellor's paper of petitions on account of non-attendance, be restored to the paper, without an order being made by his honour the Vice-Chancellor, upon petition for that purpose; or be placed in the Lord Chancellor's paper, except by order made upon petition. Buck, 107, 2 Mad. 146, and see *Ex p. Stone*, Buck, 255.

But if both parties appear, then the matter of the petition is argued, by the counsel for the petitioner, then by the counsel for the respondent, and lastly by the senior counsel for the petitioner in reply. Where a party has an objection of form to a petition, he should come prepared also to argue the matter of the petition upon the merits, in case the objection be overruled; and the court in such a case will allow the petition to stand over, only upon payment of costs by the party causing the delay. *Ex p. Bellott*, 2 Mad. 261.

The court judges of the case from the affidavits, and (in the case of a petition for a *supersedeas*) from an inspection of the proceedings. And therefore, upon the hearing of a petition to supersede a commission, the file of the proceedings should be in court, in order that they may be referred to, if necessary. But although the petitioning creditor's debt, trading and act of bankruptcy, appear on the face of the proceedings to be fully established, yet if the court be satisfied of their insufficiency by affidavit, it will supersede the commission, even without an issue. *Ex p. Gallimore*, 2 Rose, 235. On the other hand, where the bankrupt petitions for a *supersedeas*, upon an affidavit of there having been no act of bankruptcy, the court, although there be

no affidavit in answer, or there have been no notice that the proceedings would be produced, will look into the proceedings to ascertain the sufficiency of the act of bankruptcy. *Ex p. Vypond*, 1 *Mad.* 624.

But an examination taken before the commissioners, cannot be used in evidence, either as a judicial proceeding, or merely as an affidavit, on a petition to expunge the debt of a creditor, who was no party to the inquiry; for he had no opportunity to cross-examine the witness. *Ex p. Coles, Buck*, 242, 3 *Mad.* 315. See *Ex p. Fowles, Buck*, 98. *Ex p. Stracey*, 1 *Rose*, 66.

After hearing the counsel on both sides, the court either makes an order, or refers the matter to the master, or directs an issue; in the two latter cases, the further consideration of the petition by the court is suspended, until the master have reported, or the issue have been tried, and then an order is made. Where the matter is referred to the master, the affidavits already filed, which might have been read at the hearing, may be used before him. *Ex p. Jackson*, 1 *Rose*, 45.

*Issue.*] Upon a doubt on a point of law, the Lord Chancellor may send a case for the opinion of a court of law; see *Ex p. Cottrell, Cowp.* 742; upon a doubt in matter of fact, he may send an issue to a court of law, to be there tried by a jury. See *Ex p. Gulston*. 1 *Atk.* 139, and see as to the practice in *B. R.* when a case is stated, and when an issue is directed, 1 *Arch. Pr. B. R. p.* . But it is only in cases of doubt, where the material facts of the case are disputed in the affidavits on both sides, that the court will direct an issue: see *Ex p. Williamson, Buck*, 420. *Ex p. Billiald, Id.* 220: and consequently not until after it has heard all the evidence read, and the case fully argued; unless the counsel on both sides agree that such must ultimately be the result, if the case were gone into. *Ex p. Heygate, Buck*, 441. See *Ex p. Trustrum, Buck*, 550. And if, upon the hearing, the matter appear clear, the court will at once decide upon the petition and affidavits, without directing an issue, although the petitioning creditor may be desirous of trying it. *Ex p. Gallimore*, 1 *Mad.* 67. *Ex p. Gulston*, 1 *Atk.* 193. *Ex p. Wilson, Id.* 217. Where, upon a petition for a *supersedeas*, the act of bankruptcy upon the proceedings appeared to be insufficient, and there was no affidavit of any other act which would support the commission, and no question raised which could make a trial at law useful, the court superseded the commission, without an issue. *Ex p. Burgess, Buck*, 233. Even, in such a case, although the trading, petitioning creditor's debt, and act of bankruptcy, appear on the face of the proceedings to be sufficient, yet if the court be satisfied of the insufficiency of

any of them, from the affidavits, it will supersede the commission, without an issue. *Ex p. Gallimore*, 2 Rose, [234. Nor will the court direct an issue, in any case, where felony is imputed to one of the parties by the petition, or where a matter of criminal charge would necessarily form the subject of the issue, if directed. *Ex p. Scott, Buck*, 275. Nor will the court in general (unless under particular circumstances, see *Ex p. Collins*, 1 Rose. 273) direct an issue, on the petition of the bankrupt, where the petition goes to impugn the validity of the commission; because the bankrupt can at any time bring an action to try its validity, *Ex p. Nutt*, 1 Atk. 102. *Ex p. Gulston*, 1 Atk. 193. *Ex p. Billiald, Buck*, 220, and see *Ex p. Marks*, 1 Glyn & J. 70, after which he may apply by petition, and the *supersedeas* will be immediately awarded. *Ex p. Dick*, 1 Rose, 51. Or if, in any case, the subject of the petition, as for instance, the validity of the commission, be in a course of litigation before a jury, the court will retain the petition, and defer the farther consideration of it until the event of the trial at law be known. *Ex p. Price, Buck*, 230, 3 Mad. 228.

Upon directing an issue at law, the court will state the terms of it in the order, and direct who shall be made plaintiff and defendant, what shall be deemed admissible as evidence, and who shall be examined as witnesses, &c.; see *Ex p. Carter & al.* 1 Glyn & J. 326; and this, without much regard for the strict rules of evidence in courts of law, wherever the observance of such rules would prevent a thorough and complete examination of the question in dispute. See *Ex p. Williamson, Buck*, 420. *Ex p. Carter, supra*. In the mean time, the petition is ordered to stand over to a particular day, to give time for the issue to be tried; and if the plaintiff do not proceed to trial before that time, or account satisfactorily for his not having done so, the court will decide the matter of the petition against him. *Ex p. Rankin*, 3 Mad. 371.

After the issue is tried, the court will proceed and make its order upon the petition, and will not in general direct another issue or trial, unless for very special reasons. See *Ex p. Prosser, Buck*, 77. *Ex p. Bryant*, 2 Rose, 1. *Ex p. Dick*, 1 Rose, 51. And if the issue be decided against the petitioner, it is not necessary for the other party to present a counter petition, in order to have the decision of the court, but the court will dismiss the original petition upon motion. *Ex p. Caponhurst, Buck*, 476.

*The order.*] When the court have decided upon the petition, the order thereupon is afterwards drawn up at the office of the secretary of bankrupts, from minutes taken at the time. This should in general be done without delay. And by *Ord. Loughb.*

22d March, 1796, it is ordered, that if any solicitor shall refuse or neglect to draw up and take away from the office, the order made upon the hearing of any petition presented against the allowance of a bankrupt's certificate, within three months from the time such order is made, then that such bankrupt's certificate should be laid before the Lord Chancellor, for his allowance and confirmation, any order pronounced for staying the same notwithstanding. As to orders to pay money, *see Ex p. Davison & al.*, 1 Glyn & J. 227.

If the order require any thing to be done by a party, he must be served personally with a copy of it, the original being shewn to him at the same time ; and if it be for the payment of money, a demand of the money must be made of the party personally, by the person to whom it is to be paid according to the terms of the order, or by some person deputed by him by power of attorney for that purpose, in which latter case the power of attorney must be shewn at the time the money is demanded. *See the form of such a power of attorney, Arch. Forms.* But if it appear that the party keeps out of the way, in order to avoid being served with the order, the court will in some cases dispense with personal service, and allow of some other service being substituted for it : as for instance, where it appeared by affidavit, that an attorney and another were keeping out of the way, in order to avoid being served with an order in bankruptcy to pay money, the court ordered that service of the order at the office of the attorney, should be deemed good service. *Ex p. Anderson, in Re Platt, Buck, 38.*

**Costs.]** Costs upon petitions in bankruptcy, are entirely in the discretion of the court. The court indeed usually give them, by their order, to the party succeeding ; yet to this rule there are many exceptions. If a bankrupt petition to supersede the commission, and an issue be directed, and found for him, still the court will not in general give him costs ; because he should have tried the validity of his commission in an action at law, before he applied for a *supersedeas*. *Ex p. Marks, 1 Glyn & J. 70.* If a petition to stay the certificate be dismissed, it is usually dismissed with costs to be paid to the bankrupt : yet if in such a case, the conduct of the bankrupt appear to have been such as not to entitle him to any indulgence from the court, *Ex p. Stevens, Buck, 389, 4 Mad. 261*, if he have misled the creditor by a statement, the truth of which he, on the petition, denies, but does not deny his having made the statement, *Ex p. Enderby, 5 Mad. 76*, or the like, the court will not give him his costs. So, if no good grounds be shewn for bringing a creditor before the court, to have his debt expunged, he will be



allowed his costs : but if he have misled the assignees into the application, by his affidavit, he will not. *Ex p. Hustler, Buck, 177, 3 Mad. 117.* So, where a petition by a creditor to supersede a commission, is dismissed, yet if the case be suspicious, he will not be ordered to pay costs. *Ex p. Gardner, 1 V. & B. 45. Ex p. Stevens, 4 Mad. 259.* Nor will the court, in any case, give costs to either party, upon a petition against a decision of the commissioners. *Ex p. Allen, Cook, 608. Ex p. Moggridge, Id. ib. See Ex p. Greenway, Buck, 420.* Nor will the court order the commissioners to pay costs. *Ex p. Scarth, 14 Ves. 204, 15 Ves. 293.* Nor will they in general give costs against an uncertificated bankrupt, unless in case of fraud. *Bromley v. Goodere, 1 Atk. 76. Lock v. Bromley, 13 Ves. 40.* Nor will they give costs to a petitioner in any case, unless prayed for by his petition. *Ex p. Atkinson, Buck, 215.* Where a commission is superseded, on the ground of there not being a sufficient petitioning creditor's debt, the petitioning creditor will be ordered to pay the costs of the petition and *supersedeas* ; *Ex p. Page, 1 Glyn & J. 100. and see Ex p. Heming, Buck, 350.* So also, if superseded on the ground of misnomen or wrong description of the bankrupt. *Ex p. Horsley, 2 Mad. 11. Ex p. Parrey, MS. ;* if superseded for collusion, both the petitioning creditor and the solicitor who sued out the commission, will be ordered to pay the costs. *Re Brown, Buck, 77. Ex p. Binmer, 1 Mad. 250.* So, in some cases, where a petition has been presented upon a subject of which the court has no jurisdiction, or without grounds to warrant it, the court have made the petitioner's solicitor pay the costs. *Ex p. Cuthbert, 1 Mad. 78. See Ex p. Haywood, 13 Ves. 67. Ex p. Arrowsmith, 14 Ves. 209.* Upon a petition by an equitable mortgagee to have the premises sold, &c., if he hold the deeds under a written agreement, the court will allow him the costs of his application ; otherwise not. *Ex p. Brightens, 1 Swanst. 3, Buck, 148. Ex p. Trew, 3 Mad. 372. Ex p. Warry, 19 Ves. 472. Ex p. Sikes, Buck, 349. Anon. 2 Mad. 288.* Where an issue is directed, the costs generally follow the verdict ; *Ex p. Gulston, 1 Atk. 193 ;* but it is in the discretion of the court to grant them or not ; even where an action is directed to be brought, the party succeeding cannot sue out execution for the costs, the court of equity still reserving to itself, in such a case, the discretion of awarding these costs to the successful party or not. *Ex p. Gregory, 1 Glyn & J. 177.*

Where a party to a petition asks for a favour or indulgence, the court will take care that the opposite party shall not be damnified by their granting it. Therefore if a party wish to put off the hearing of a petition, or if the court, as a matter of in-

dulgence, put it off, in order to allow an amendment, they will do so only on the terms of the party applying or in fault paying the costs of the day of the opposite party: *vide ante*, p. 239, 226: and it may be necessary perhaps here to mention, that costs of the day must be applied for or ordered at the time; you cannot apply for them afterwards. *Ex p. Green*, 1 Glyn & J. 188; and though it is not necessary to draw up an order for the costs of the day, yet there must be a demand made, or the non-payment will not be a valid objection to the hearing the petition when it comes on again. *Ex p. Leech*, 2 Glyn & J. 78. And, if a bankrupt petition to enlarge the time for his surrendering, he will be obliged to pay the expenses of the meeting to be called for that purpose. *Ex p. Carter*, 4 Mad. 394.

Sometimes the costs are ordered to be paid out of the estate, particularly in the case of assignees, where they are put to expense in the fair and legitimate exercise of their duty. *See Ex p. Bonbonous*, 3 Mad. 23. *Ex p. Garbutt*, 2 Rose, 78. *See Ex p. Coles, Buck*, 256.

Costs in bankruptcy, cannot be recovered in an action at law: *Re Dillon*, 2 Sch. & Lef. 110; unless there have been an express promise to pay them. On the other hand, where a commission is superseded at the costs of several petitioning creditors, if some of them pay the costs, the court has no jurisdiction in bankruptcy to order the rest of the petitioning creditors to contribute. *Ex p. Wilmhurst & al.*, 1 Glyn & J. 4.

*Rehearing and Appeal.*] A petition to rehear, or of appeal, may be presented in bankruptcy, as in other cases. It is a general rule, however, that an order cannot be reheard or appealed against for costs only; *Ex p. Slack, Cook*, 608; but where the question was, not as to the personal payment of costs, but whether they were payable out of a particular fund, it was holden that it might be made the subject of a petition for rehearing. *Ex p. Baines*, 1 Glyn & J. 259.

A petition of appeal from an order of the Vice Chancellor, must be signed by a barrister. *Ex p. Holt, Buck*, 429.

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## SECTION XVIII.

*The Assignees.*

1. *Their rights.*
2. *Their duties.*
3. *Their liabilities.*
4. *Actions by and against them.*
5. *Suits in equity, &c.*
6. *Consequences of their death, removal, absconding, &c.*

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 1. *Their Rights.*

As soon as assignees are chosen, (*see ante*, p. 115,) and the assignment, &c. executed to them, (*see ante*, p. 121,) the whole of the property which passes under the assignment and bargain and sale (*see ante*, p. 123—176) vests in them absolutely, so as to give them precisely the same rights and remedies with relation to it, as if the property vested in them in their own right individually. And where there are two or more assignees, they stand seised or possessed of the property thus assigned to them, in joint tenancy, with a right of survivorship in case of death. They represent the bankrupt, in every matter relating to his property; they have the same rights that he had, with some additional ones given them by statute, which have been already noticed in the course of the work; and they are in general bound by the same equities. *See* 2 *V. & B.* 309. 13 *Ves.* 188. 12 *Ves.* 349. 9 *Ves.* 100. 2 *Ves.* 255. 2 *Vern.* 286. 2 *Atk.* 562. 2 *Show.* 103. 1 *Ves. sen.* 331. Where a trader, before his bankruptcy, agreed with his surety that he might retain towards the liquidation of the debt for which he was surety, the amount of any goods he should purchase of him in the way of his trade: it was holden that the assignees could not maintain an action against the surety for the amount of goods so purchased by him of the trader after the agreement and before the bankruptcy, the surety having paid the principal debt. *Dobson v. Lockhart*, 5 *T. R.* 133, and *see ante*, p. 137. So, where the assignees received payment of a bill of exchange, which had been fraudulently obtained by the bankrupt from the owner, it was holden that the owner might recover the amount from the assignees, in an action for money had and received. *Harrison*

*v. Walker, Peake*, 111, and *see ante*, p. 133. So, in all cases where a bankrupt would be considered a trustee for another, the assignees will be deemed trustees also. *Tyrrell v. Hope*, 1 *Atk.* 558. So, if a bill of exchange have been transferred to a person by a bankrupt before his bankruptcy, but not indorsed : although the court have no jurisdiction to compel the bankrupt to indorse it, yet, as the indorsement of the assignees will equally give a title to the holder, the court will order the assignees to indorse it, and will frame the order for a special indorsement, that will prevent the assignees from being personally liable. *Ex p. Mowbray*, 1 *Jac. & W.* 428. And on the other hand, the assignees may adopt a contract, made by the bankrupt even after his bankruptcy ; as, for instance, where a trader, who had delivered goods to a factor, and taken a bill upon the credit of them, agreed with the factor, after an act of bankruptcy, to return the bill and take back the goods ; and the bill was accordingly returned, but the factor refused to give up the goods : it was holden that the assignees might adopt the contract made by the bankrupt, and maintain the action founded on it. *Butler v. Carver & al.* 2 *Stark.* 434. And where a bankrupt sells goods under the value, no action will lie by the assignees, to recover the difference between the price for which they were sold and their real value ; for the bankrupt himself could not maintain such an action. *Mogg & al. v. Mitchell*, 1 *Stark*, 241. *Burra & al. v. Clarke & al.* 4 *Camp.* 355.

The assignees, as soon as they are chosen, appoint the solicitor, who is thenceforth to conduct the proceedings under the commission ; either the solicitor who sued out the commission, or another. So, they may remove the solicitor they have thus appointed ; and, upon being removed, he will be obliged to give up to the assignees the commission and proceedings, &c. *Ex p. Hardy*, 1 *Rose*, 395, and *see ante*, p. 16, even although his bill have not been paid. *See Ex p. Shaw*, 1 *Glyn & J.* 124. The solicitor is chosen or removed by the majority of the assignees. *Ex p. Tomlinson*, 2 *Rose*, 66.

The assignees are entitled to the custody of the commission and proceedings ; although in practice the solicitor usually has possession of them. *Ibid.* And the solicitor, it seems, cannot be compelled to produce them, upon a *subpœna duces tecum* ; *Bateson v. Hartsink*, 4 *Esp.* 43 ; the proper course is, to apply to have them enrolled, and then produce a copy ; *Id.* ; or the Lord Chancellor, in some cases, upon application, will order them to be produced. *See Ex p. Warren*, 1 *Rose*, 276, 19 *Ves.* 162. *Ex p. Bernal*, 11 *Ves.* 557. *See* 8 *Ves.* 314. *Ex p. Shaw*, 1 *Jac.* 270. In a case where the file of proceedings was lost, but the commission and assignment existed, Lord Eldon directed

that the creditors should prove over again ; and in another case, where the proceedings were lost, but a list of the debts was preserved, and authenticated upon oath, Lord Eldon directed the commissioners to declare dividends upon it, in the same manner as they would have done upon the original proceedings. 1 *Christian*, B. L. 557. *Cook*, 124.

For all reasonable expenses incurred by them, in the exercise of their functions as assignees, they may repay themselves out of the bankrupt's estate. Even costs incurred by them in defending the commission, will be allowed them, as between attorney and client, out of the estate. *Ex p. Bryant*, 2 *Rose*, 1. But assignees who are accountants, shall not be permitted to charge the estate for business done by them as such. *Ex p. Read*, 1 *Glyn & J.* 77. Or if they carry on a suit in equity, without first obtaining the sanction of the creditors to their doing so, the bankrupt's estate shall not be made liable for the costs. *Ex p. Whitchurch*, 1 *Atk.* 210.

One assignee may depute another to act for him in a particular case ; but he cannot give him a general authority to do so ; at least a general authority will not enable him to execute a release by deed. *Williams v. Walsby*, 4 *Esp.* 220. Nor can one assignee execute a release for another, without such special authority, *Harrison v. Jackson*, 7 *T. R.* 207, unless done in the presence of the other. *Williams v. Walsby*, *supra*.

Where the debtor of a bankrupt also becomes bankrupt, any one of the assignees may sue out a commission of bankrupt against him, without the other assignees joining in the affidavit. *Ex p. Blakey*, 1 *Glyn & J.* 197. So, payment *bond fide* to one of two assignees, is payment to both, *Smith & al. v. Jameson*, 1 *Esp.* 114, unless the other assignee have expressly dissented. *Bristow & al. v. Eastman*, 1 *Esp.* 172. Where they have to act jointly, the determination of the majority shall bind the others. See *Ex p. Tomlinson*, 2 *Rose*, 66.

## 2. *Their Duties.*

1. It is the duty of the assignees to call meetings of the creditors, upon all extraordinary occasions, where the interests of the creditors are materially concerned ; at least, they are to be commended for doing so, although in strictness they are obliged by statute to call a meeting, only when they require the sanction of the creditors to their compounding debts, giving time or taking security for the payment of debts, submitting disputes to arbitration, or commencing suits in equity. *Ex p. Proudfoot*, 1 *Atk.* 251. *Ex p. Cater*, 1 *Bro.* 267.

2. They must collect the debts due to the bankrupt, and take

possession and make sale of all the bankrupt's property which passes to them under the assignment, without delay. *See as to the sale of the property, ante, p. 177, and Ex p. Hughes, 6 Ves. 617. and see ii. p. 106.* And the authority of the assignees in this respect, is limited to the purposes of their trust, namely, the distribution of the estate under the bankrupt laws; they have no authority to enter into an agreement for the disposal of the surplus, after payment of 10s. in the pound to the creditors. *Ex p. Barfit, 12 Ves. 15.* As to the title the assignees are obliged to make out for purchasers, *see ante, p. 178.* An assignee cannot bid at the sale, either on behalf of himself or others, without first obtaining the consent of the creditors, and petitioning for leave to do so. *Ante, p. 177, and see Ex p. Morgan, 12 Ves. 6.*

3. They must pay the money so collected into the hands of the banker appointed by the creditors, or lay it out in the purchase of exchequer bills, (if directed by the commissioners to do so,) or pay interest for it at the rate of 20 per cent. for such time as they shall retain it in their hands, or apply it to their own use. *Ante, p. 119, and see Ex p. Bray, 1 Rose, 144.*

4. By stat. 6 Geo. 4. c. 16. § 101, the assignees shall keep an account, wherein they shall enter all property of the bankrupt received by them, and all payments made by them on account of the bankrupt's estate, which account every creditor who shall have proved may inspect at all seasonable times; and it shall be lawful for the commissioners, at all times, by writing under their hands, to summon the assignees before them, and require them to produce all books, papers, deeds, writings, and other documents relating to the bankruptcy in their possession; and if such assignees so summoned shall not come before the commissioners at the time appointed, (having no impediment made known to the commissioners at the time of their meeting, and allowed by them,) it shall be lawful for the said commissioners, by warrant under their hands and seals, directed to such person as they shall think fit, to cause such assignees to be brought before them; and upon their refusing to produce such books, deeds, writings, papers, or documents, as aforesaid, it shall be lawful for the said commissioners to commit the party so refusing to such prison as they shall think fit, there to remain without bail, until such party shall submit himself to the said commissioners. *The forms of the warrants may readily be framed from the like forms as to witnesses, ii. p. 95.*

And if upon the application of a creditor, the commissioners refuse to compel the assignees to produce their accounts, the court upon petition will order the assignees to do so. *Ex p. Brockopp, Buck, 304.*

5. They should scrutinize the conduct of the bankrupt, both prior and subsequent to the act of bankruptcy, with reference to the disposition of his property ; and should watch narrowly the proofs of debts, in order to prevent persons proving under the commission, who have no right to do so.

6. The assignees must distribute the estate rateably among all the creditors who have proved debts under the commission. See *ante* p. 211, &c.

7. The assignees must file a certificate in the bankrupt office, of all unclaimed dividends remaining in their hands. See *ante*, p. 214.

### 3. *Their Liabilities.*

1. The assignees are liable to the solicitor to the commission, and to the messenger, for the amount of their respective bills, subsequent to the choice of assignees, whether they have assets to pay them or not ; and to the petitioning creditor, for the amount of the solicitor's and messenger's bills previous to the choice of assignees, if they have assets. *Ante*, p. 215, &c.

2. The assignees are liable to the commissioners upon their covenant for indemnity contained in the assignment, and if the commissioners be damnified, contrary to the terms and meaning of the covenant, the court will not restrain them from bringing an action upon it. *Ex p. Linthwaite*, 16 *Ves.* 234.

3. If the assignees seize or retain possession of property, which does not pass to them under the assignment, the owner of it may maintain an action against them in respect of it.

4. Where the bankrupt as the agent of the assignees, is permitted to carry on the business for the benefit of the creditors, and not on his own account, the assignees are liable for goods supplied for the purposes of the business, even although the credit were given in the bankrupt's own name. *Kinder v. Howarth*, 2 *Stark.* 354. So, if assignees employ a person in the conduct and management of the bankrupt's property, who misapplies or embezzles the money : they will be liable to the estate for the money so misapplied or embezzled, unless they had the sanction of the creditors to their appointment of the agent. *Re Litchfield*, 1 *Atk.* 86. But where the assignees employ a person, either from necessity, or conformably with the common usage of mankind,—as for instance, if they employ a broker to sell goods and he receive the money, and immediately fails, without having paid it over, if the assignees used sufficient precaution, in the choice of such person, they will not be liable for his default. *Ex p. Belchier*, *Amb.* 218, 1 *Kenyon's Rep.* 38. *Ex p. Lane*, 1 *Atk.* 90.

5. If an assignee become bankrupt, at a time that he is indebted to the bankrupt's estate for money retained or employed by him for his own benefit, the debt may of course be proved upon his estate, *See Ex p. Spong*, 1 *Rose*, 133. *Ex p. Bignold*, 2 *Mad.* 470. *Ex p. Stonehouse*, *Buck*, 531, and his certificate will only free his person, but his future effects will still remain liable for such part of it as shall not be paid out of his estate, together with interest. 6 *Geo.* 4. c. 16. § 106 *ante*, p. 209. But his estate will not be liable to the 20l. per cent. on funds retained or misapplied by him. *See Ex p. Goldsmith*, 1 *Glyn. & J.* 405. and if he die, leaving real property, such a debt would be a lien upon it, for as the assignees always execute a counterpart of the assignment, the commissioners are to be considered specialty creditors. *Bristow v. Eastman*, 1 *Esp.* 172. *See Wackerbath v. Powell*, *Buck*, 495, 2 *Glyn & J.* 151.

6. Assignees are liable, each for his own default only, and not for the negligence or misconduct of his co-assignee. *Primrose v. Bromley*, 1 *Atk.* 88. *Re Litchfield*, *Id.* 87. *Ex p. Griffin*, 2 *Glyn & J.* 114, but if by the aid of one assignee out of the course of his duty the property under the commission be placed within the single power of the other assignee both are liable for its misapplication. *Ex p. Griffin, supra*.

Assignees are not liable for the rent of premises leased by the bankrupt, or for the nonperformance of the covenants, unless they accept the lease. *Bourdillon v. Dalton*, *Peak*, 238, 2 *Esp.* 233. *See* 6 *Geo.* 4. c. 16. § 75, *ante*, p. 126—129, and *Ex p. Quantock*, *Buck*, 189.

8. The Lord Chancellor has no jurisdiction to indemnify assignees against the consequences of their own acts, although done strictly in the execution of the duties cast upon them by their office; he cannot, for instance, relieve them in any manner from their liability to the bankrupt, in respect of property disposed of under the commission, if the commission be superseded. *Re Bryant*, 2 *Rose*, 17. But if one assignee pay a sum for which both were liable, he shall have contribution from the other; *Hart v. Biggs*, 1 *Holt.* 245. *Lingard v. Bromley*, 1 *V. & B.* 114; and where two of three assignees became bankrupt, and the solvent assignee paid a debt due from the three to the bankrupt's estate, it was holden that he was entitled to prove a third of the debt against the estate of each of the bankrupt assignees. *Ex p. Hunter*, *Buck*, 352.

#### 4. Actions by and against them.

*What actions.*] The assignees have the same remedies by



action, for the recovery of debts due to the bankrupt, and for all civil injuries with respect to property which has passed to them under the assignment and bargain and sale, that the bankrupt would have had, if no commission had been sued out against him.

An action for money had and received may be brought by assignees, against any person who has received money which ought to be paid to them : as, for instance, if a trader become bankrupt by lying in prison, his assignees may maintain an action for money had and received against a person, who, having notice that a commission would be issued against him, sold his goods and paid him the produce, after the arrest and before the expiration of the period of imprisonment which constitutes an act of bankruptcy, the bankruptcy having relation to the day of the arrest. *King v. Leith*, 2 T. R. 141. If a creditor, after an act of bankruptcy by the debtor, by means of a foreign attachment, attach and receive a debt due to the bankrupt from another, the assignees may recover it from him in an action for money had and received. *Sill v. Worswick*, 1 H. Bl. 665. *Hunter v. Potts*, 4 T. R. 182. *Phillips v. Hunter*, 2 H. Bl. 402. Or if a creditor levy an execution upon goods in his debtor's possession, after the debtor has committed an act of bankruptcy, and receive the produce of it from the sheriff, the debtor's assignees may recover it in an action for money had and received. *Kitchen v. Campbell*, 3 Wils. 304, 2 W. Bl. 827. So, assignees may maintain an action for money had and received against a banker, for money received by him, and paid over to a creditor of the bankrupt with knowledge of the bankruptcy ; but, after having recovered it from the banker, they cannot maintain an action for the same sum against the creditor, although he also received it after notice of the bankruptcy ; they had their option, in the first instance, of bringing their action against the banker or the creditor, but they could not recover against both. *Vernon v. Anson*, 2 T. R. 287. But assignees cannot maintain an action for money had and received against a landlord, for money paid to him for rent by the bankrupt after an act of bankruptcy, in consequence of the landlord's being about to distrain for it ; for the landlord had a legal lien for it, upon the goods in the bankrupt's possession at the time. *Stevenson v. Wood*, 5 Esp. 200. Nor will an action for money had and received lie against a person who was merely the bearer of the money from a third person to the bankrupt, after the act of bankruptcy. *Coles v. Wright*, 4 Taunt. 198. Nor will it lie for the amount of India stock, transferred by a trader after an act of bankruptcy ; for in that case no money in fact has been received. *Nightingal v. Devisme*, 5 Bur. 2589. Nor

will it lie for money received by a creditor, in payment of a bill of exchange, indorsed to him by the bankrupt after an act of bankruptcy; the assignees should bring trover for the bill. *Waller v. Drakeford*, 1 Stark. 481, but see *Thomason v. Frere*, 10 East, 418.

Debt may be maintained by the assignees of a bankrupt; they may even have debt on stat. 9 Ann c. 14, for money lost by the bankrupt at play, before his bankruptcy. *Brandon v. Pate*, 2 H. Bl. 368. *Carter v. Abbott*, 2 D. & R. 575, 1 B. & C. 444. And so completely are the rights of the bankrupt vested in them, not merely as representing him, but by actual assignment, that they can sue in the *debet* and *detinet*, whilst an executor, who merely represents his testator, can sue in *detinet* only. See 2 T. R. 46, *Per Buller, J.*

Covenant will lie by assignees on a lease, &c. by the bankrupt; and the tenant, in such a case, is estopped from pleading *nil habuit in tenementis*, in the same manner as he would be in an action by the bankrupt himself. *Parker v. Manning*. 7 T. R. 537.

Trespass, it would seem, will not lie at the suit of assignees, for any injury or amotion of the property, committed before they have obtained actual possession of it under the assignment. See *Clark v. Calvert*, 3 Moore, 96, and see 1 Glyn & J. 147. It will not lie against a sheriff, for taking the bankrupt's goods in execution after the act of bankruptcy and before the issuing of the commission; the assignees, in such a case, should bring trover. *Smith v. Milles*, 1 T. R. 475.

But trover is the usual action brought by assignees, in the case of amotion of property. If any of the bankrupt's goods be taken in execution after the act of bankruptcy and before they are seized under the commission, and sold, the assignees may recover the value of them in an action of trover against the sheriff, *Smith v. Milles*, 1 T. R. 475. *Cooper v. Chitty*, 1 Bur. 20, 1 W. Bl. 65, or in the like action against the plaintiff, if he accompanied the officer in making the levy, even although the produce of the goods remain in the hands of the sheriff or his broker, *Menham v. Edmonson*, 1 B. & P. 369, or if he received the produce from the sheriff, upon giving a bond of indemnity. *Rush v. Baker*, 2 Str. 996. So, trover is the proper action to recover the value of a bill of exchange, indorsed by the bankrupt to a creditor after an act of bankruptcy, although he have since received payment of it. *Waller v. Drakeford*, 1 Stark. 481, but see *Thomason v. Frere*, 10 East, 418. So, if any person, during a bankrupt's examination, take any thing out of his effects, and convert it into money, even for the necessary subsistence of the bankrupt and his family, the assignees may recover

the value of it in an action of trover against him. *Thompson v. Councell*, 1 T. R. 157. So, assignees may maintain trover for goods sold by the bankrupt after an act of bankruptcy, although they may have demanded payment of them; and this, it seems, without making any previous demand of them; for the very taking of goods from one who has no right to dispose of them, is of itself a conversion. *Hurst v. Gwennap*, 2 Stark. 306. But where trover is brought for goods collusively sold to a creditor, before an act of bankruptcy, but in contemplation of bankruptcy, and with a view of giving him a fraudulent preference, there must be either a demand and refusal, or an actual conversion, to enable the assignees to maintain the action. *Nixon v. Jenkins*, 2 H. Bl. 135. Where goods of a trader are, after an act of bankruptcy, and before the issuing of the commission, taken by a third person, the assignees' remedy is trover; if sold by the bankrupt, the assignees may bring trover against the vendee, or they may treat it as a sale by their agent and bring assumpsit; if sold by such third person for the bankrupt, the assignees may recover the value of the goods in trover against the seller, or they may bring assumpsit for the price received by him, even although he may have paid it over to the bankrupt. *King v. Leith*, 2 T. R. 141. See *Wilson v. Poulter*, 2 Str. 859. And in all cases where the assignees have the option thus of suing in an action *ex contractu* or an action *ex delicto*, the latter should be preferred, for the reasons already given, *ante*, p. 95, if the defendant claims to have any demand against the bankrupt, which may be made the subject of a set off.

It is not necessary for the assignees to obtain the consent of the creditors, to enable them to commence an action at law. *Hussey v. Fidell*, 12 Mad. 324, 3 Salk. 59. *Spragg v. Binkes*, 5 Ves. 583.

As to actions against the assignees; they may be sued in their individual capacity, for any cause of action arising to others from their acts, which they cannot justify under the commission and assignment. They cannot, however, we have seen, (*ante*, p. 214,) be sued for the amount of dividends by action; the proper remedy is by petition. 6 Geo. 4. c. 16. § 111.

*Who to be parties.]* In actions by assignees; all of them who are living must join as plaintiffs; *Snellgrove v. Hunt*, 2 Stark. 424; otherwise, in actions *ex contractu*, the plaintiffs will be nonsuited, *Id.*, or the defendant may take advantage of it by plea of nonjoinder in abatement, or (if the error appear upon the face of the record) by demurrer, motion in arrest of judgment, or writ of error; *Arch. Pl. & Ev.* 53; but in actions *ex delicto*, the defendant can avail himself of the defect, by plea

of nonjoinder in abatement only. *Arch. Pl. & Ev.* 53, 54. And if in this latter case he fail to plead in abatement, the plaintiffs may recover their shares of the damages. *Bloxham v. Hubbard*, 5 *East*, 407, and the assignee omitted may afterwards sue alone for his proportion. See *Sedgworth v. Overend & al.* 7 *T. R.* 279. And the action must be brought by all those who appear to have title under the assignment: and therefore, where it had been ordered that one of two assignees should be removed, and another chosen, and a new assignment made, but which assignment was executed by one only of the old assignees, the other having absconded; in an action by the remaining old assignee and the assignee recently chosen, it was holden that they could not recover; *Aldritt v. Kittridge*, 6 *Moore*, 569; for assignees continue to have the legal estate in them, until a reassignment is actually executed. *Bloxham v. Hubbard*, 5 *East*, 407. But if they were assignees at the time of the issuing of the writ, the action may be continued in their names, although their title were afterwards determined by the choice of new assignees, to whom the bankrupt's property was regularly assigned. *Page v. Bauer*, 4 *B. & A.* 345. If the cause of action arise from property vested in a trustee for the bankrupt, the action must be brought in the name of the trustee. *Ex p. Coysegame*, 1 *Atk.* 193.

Where a joint commission is sued out against two or more partners, the assignees may bring an action to recover a debt due to the separate estate of one of them, and may describe themselves in the declaration as the assignees of that one only. *Stonehouse v. De Silva*, 3 *Camp.* 399. But the assignees under a joint commission cannot recover, if it turn out that one of the bankrupts has not in fact committed an act of bankruptcy. *Hogg v. Bridges*, 2 *Moore*, 122, 8 *Taunt.* 200. On the other hand, if a separate commission be sued out against one of several partners, the assignees of the bankrupt partner may join with the solvent partners in an action for a joint debt; *Thomason v. Frere*, 10 *East*, 418; or if the partners will not consent to join, then the assignees may proceed as directed by 6 *Geo. 4 c. 16*, § 89, by which it is enacted, that in any commission against any one or more member or members of a firm, the Lord Chancellor may, upon petition, authorise the assignees to commence or prosecute any action at law, or suit in equity, in the names of such assignees and of the remaining partner or partners, against any debtor of the partnership, and may obtain such judgment, decree, or order therein, as if such action or suit had been instituted with the consent of such partner or partners; and if such partner or partners shall execute any release of the debt or demand for which such action or suit is

instituted, such release shall be void: provided that every such partner, if no benefit is claimed by him by virtue of the said proceedings, shall be indemnified against the payment of any costs in respect of such action or suit; and that it shall be lawful for the Lord Chancellor, upon the petition of such partner, to direct that he may receive so much of the proceeds of such action or suit as the Lord Chancellor shall think fit.

And where there are separate commissions against two or more persons who have a joint cause of action, the assignees under all of the commissions must join in bringing the action; *Streatfield v. Halliday*, 3 T. R. 779: otherwise the nonjoinder may be objected to, in the manner abovementioned. But they cannot sue for a joint debt, and also for separate debts due to each, in the same action, even although the same persons be assignees under each of the commissions. *Hancock v. Hayward*, 3 T. R. 433.

In actions against assignees, all of them who are living must be joined as defendants in actions *ex contractu*, otherwise the defendants may plead the nonjoinder in abatement; but no advantage can be taken of nonjoinder in actions *ex delicto*. See *Arch. Pl. & Ev.* 68.

*Declaration.*] If the cause of action arose to the bankrupt previously to the bankruptcy, the assignees must sue as such and describe themselves as assignees in the declaration; but if it arose after the act of bankruptcy, and either before or after the issuing the commission, they may sue in their individual capacity, as in their own right, without describing themselves as assignees. *Evans v. Mann*, Cowp. 569. *Thomas v. Rideing*, 1 Wightwick, 121. Where the assignees under a joint commission, sue for a separate debt due to one of the partners, they may describe themselves as the assignees of that partner only. *Stonehouse v. De Silva*, 3 Camp, 399. And where the assignees under separate commissions against two or more persons, sue jointly, they cannot describe themselves as assignees of all the bankrupts, but each set of assignees must be distinctly described as the assignees of the bankrupt whom they represent. *Ray v. Davies*, 8 Taunt. 134, 1 Moor, 3.

The declaration states the cause of action, as it accrued to the bankrupt or to the assignees. When the declaration alleged an account stated with the bankrupt, and promises to the assignees, and the evidence was of an account stated with the bankrupt and promises to him, it was holden sufficient. *Skinner v. Rebow*, 1 Sel. N. P. 228. The plaintiff, in an action for recovery £20 per cent. interest, must declare specially as for a penalty, unless the commissioners have settled an amount charg-

ing the assignees with such interest. *Beresford v. Birch*, 1 Carr & P. 373.

*Defence.*] If the cause of action accrued before the act of bankruptcy, the defendant in an action by assignees may avail himself of every defence he could have set up to an action for the same cause by the trader, if he had not become bankrupt. Perhaps the case of trover for goods given to a creditor, before an act of bankruptcy, but in contemplation of bankruptcy, with a view of giving him a fraudulent preference, is the only exception to this rule. Where J. S. gave a trader a bond to secure an annuity; before any payment became due, J. S. lent the trader a sum of money, and it was agreed that J. S. should retain the payments of the annuity until the sum lent was discharged: in an action by the assignees of the trader (who had become bankrupt) against J. S., for arrears of the annuity, it was holden that this agreement to retain was a good defence to the action, even as to payments of the annuity accruing due after the bankruptcy, for it was equivalent to a plea of *solvit ad diem*, *Sturdy v. Arnaud*, 3 T. R. 599. So, where A. became bound in a bond as security for B.; and B., in order to indemnify him, agreed that he might retain, out of any money that might be due from him to B., in respect of any dealings between them in trade, so much as he should pay on the bond; B. afterwards sold goods to A. to a less amount than the bond, and became bankrupt, and A. was obliged to satisfy the bond: it was holden that this agreement and the payment of the bond, were a good defence to an action by the assignees of B. against A. for the price of the goods. *Dobson v. Lockhart*, 5 T. R. 133.

If the cause of action accrued after the act of bankruptcy, and the subject of it passed to the assignees under the assignment,—except disputing the bankruptcy, the defendant can set up no other defence to the action, than he might have done if the action were brought and would lie at the suit of the assignees in their individual capacity.

The defendant may plead the statute of limitations: and the statute begins to run from the accruing of the original cause of action. *Gray v. Mendez*, 1 Str. 556.

And in all actions by the assignees to recover a debt, the defendant may set off any debt due to him from the bankrupt. See *ante*, p. 91. 95. The defendant, however, cannot establish this defence, by merely proving that his cross demand has been allowed by the commissioners. *Pirie & al. v. Menett*, 3 Camp. 279.

By stat. 6 Geo. 4. c. 16, after enacting that the depositions as to the petitioning creditor's debt, trading and act of bankruptcy,

should be conclusive evidence of those facts, in actions by the assignees for any debt or demand for which the bankrupt might have sustained an action or suit, if the bankrupt should not, within two calendar months after adjudication, (or within twelve calendar months if he were out of the United Kingdom at the time of issuing the commission,) have given notice of his intention to dispute the commission, and have proceeded therein with due diligence: it is enacted, by sect. 93, that if the assignees commence any action or suit for any money so due to the bankrupt before the time allowed as aforesaid for him to dispute the commission shall have elapsed, any defendant in any such action or suit shall be entitled, after notice given to the assignees, to pay the same, or any part thereof, into the court in which such action or suit is brought; and all proceedings with respect to the money so paid into court, shall thereupon be stayed; and after the time aforesaid shall have elapsed, the assignees shall have the same paid to them out of court.

In actions against assignees, for any thing done in pursuance of the new act, the defendants may plead the general issue, and give the special matter in evidence. *See 6 Geo. 4. c. 16. § 44. ante, p. 11.* The action, also, must be commenced against them within three calendar months after the fact complained of was committed: but it is not necessary that they should plead this limitation; if it appear at the trial that the action was commenced after the time thus limited, the jury shall find a verdict for the defendants. *Id. ib.*

**Evidence.]** In actions by assignees, the plaintiffs must first prove their own title to sue, that is to say, they must prove the petitioning creditor's debt, the trading, the act of bankruptcy, the commission, and the assignment; and they must then prove the cause of action.

In actions against the assignees, the proofs for the plaintiff are, of course, the same as in ordinary cases; but on the part of the defendants, if they justify as assignees, the petitioning creditor's debt, the trading, and the act of bankruptcy, the commission, and the assignment, must be proved, as well as the special matter of defence.

The petitioning creditor's debt must be proved by the same evidence that would be requisite to support an action at the suit of the petitioning creditor, against the bankrupt, for the amount of it. *Bul. N. P. 37.* All admissions by the bankrupt, previously to the issuing of the commission, *Downton v. Cross*, 1 *Esp.* 168. and *see Hoare v. Coryton*, 4 *Taunt.* 560, entries in his books, posted by himself, before his bankruptcy, *Watts v. Thorpe*, 1 *Camp.* 376. and *see Ewer v. Preston*, *Hardw.* 378, and the like,

are evidence of the petitioning creditor's debt. So his promissory notes to the petitioning creditor, bearing date before the bankruptcy, are *prima facie* evidence of it. *Taylor v. Kinloch*, 1 Stark. 177. But no declaration or letter of the bankrupt, after the bankruptcy, is admissible as evidence of the petitioning creditor's debt; *Id.*; nor will even an account, down to a time before the bankruptcy, signed by the bankrupt, be received as evidence of it, unless it be also proved to have been signed by the bankrupt before the bankruptcy; *Hoare v. Coryton*, 4 Taunt. 560; except in actions by the bankrupt himself, where of course his admissions at any time will be received in evidence against him. See *Jarrit v. Leonard*, 2 M. & S. 265. But where the witness called to prove the petitioning creditor's debt, after proving an admission of it by the bankrupt, being asked how the debt arose, answered, by bond: it was holden that the bond should be proved by the subscribing witness, or by the usual secondary evidence upon his absence being accounted for, in order to establish the petitioning creditor's debt. *Abbott v. Plumbs*, 1 Doug. 216. see also *Antram v. Chase*, 15 East, 209. *Bowles v. Longworthy*, 5 T. R. 306. The admission of the petitioning creditor, as to the nature of the claim upon which he sued out the commission, has also been holden admissible evidence for the purpose of invalidating the commission in a collateral action. *Young & al. v. Smith & al.* 6 Esp. 121. If the debt be proved to have once existed, it will be presumed to have continued due and owing up to the date of the commission, until the contrary be proved. *Jackson v. Irwin*, 5 Camp. 48. *Ever v. Preston*, Hardw. 378. It must be proved, however, to have existed before the act of bankruptcy; that fact will not be presumed. *Ante*, p. 54. and see *Cooper v. Machin*, 1 Bing. 426. Also, if the petitioning creditor's debt was due to him as the assignee of another bankrupt, it is necessary to prove his title as assignee, by proving the petitioning creditor's debt, the trading, act of bankruptcy, commission and assignment, under which he claims. *Doe v. Liston*, 4 Taunt. 741. See *Skaife v. Howard*, 2 B. & C. 560.

The trading must be proved by some person, who can swear to the fact from his own knowledge. In an action by a bankrupt, to try the validity of his commission, his admission that he was in partnership with one who was a trader, and his being proved to have given directions in the concern, was deemed sufficient evidence of the trading, although no act of buying or selling, during the time of the partnership, was established in evidence. *Parker v. Barker*, 1 B. & B. 9, 3 Moore, 226.

The act of bankruptcy must be proved by some person, who can swear to the fact from his own knowledge; if the execution



of a deed constitute it, the deed must be produced and proved by the subscribing witness, or its absence accounted for and its contents proved by the usual secondary evidence. See 1 *Arch. Pr. B. R.* 161, &c. *Arch. Pl. & Ev.* 378, &c. *Goss v. Tracey*, 1 *P. Wms.* 189. *Burnett v. Taylor*, 9 *Ves.* 381. Or if it consist of imprisonment, for instance, in the custody of the marshal, the *commititur* must be produced; for the prison books, although evidence of the time of the commitment and discharge, are no evidence of the cause of the commitment. *Salte v. Thomas*, 3 *B. & P.* 188. And in all cases, where the intent with which the act was done, constitutes a part of the act of bankruptcy, the intent may be proved by circumstances from which the jury may presume it, or from some admission of the bankrupt accompanying or nearly contemporaneous with it; and therefore it has been holden that a declaration by the bankrupt of his motives for absenting himself from his home, made upon his return, was evidence to prove the act of bankruptcy, in an action by the assignees against a debtor of the estate. *Bateman v. Bailey*, 5 *T. R.* 512. *Ewens v. Gold*, *Bul. N. P.* 41.

The commission is proved by the production of it; it proves itself.

The assignment must be produced, and proved in the usual way by the attesting witness.

The cause of action is proved as in ordinary cases.

We have now seen the proofs necessary to sustain an action at the suit of assignees, or a defence in an action against assignees, in ordinary cases. The two following sections of the recent statute, however, form exceptions to the ordinary mode of proof, as far as respects the petitioning creditor's debt, the trading, and the act of bankruptcy: in cases within the one, the depositions are conclusive evidence of these facts; in cases within the other, those facts need not be proved at all, unless notice to dispute them have been previously given.

1. By stat. 6 Geo. 4. c. 16. § 92, if the bankrupt shall not (if he was within the United Kingdom at the issuing of the commission) within two calendar months after the adjudication, or (if he was out of the United Kingdom) within twelve calendar months after the adjudication, have given notice of his intention to dispute the commission, and have proceeded therein with due diligence, the depositions taken before the commissioners at the time of or previous to the adjudication, of the petitioning creditor's debt or debts, and of the trading and act or acts of bankruptcy, shall be conclusive evidence of the matters therein respectively contained, in all actions at law, or suits in equity, brought by the assignees for any debt or demand for which the bankrupt might have sustained any action or suit. But it is still

open to the court to consider whether the debt, trading, or act of bankruptcy stated in the depositions, be in law a sufficient petitioning creditor's debt, trading, or act of bankruptcy, within the meaning of the statute. And where the deposition of a petitioning creditor's debt, stated it to have arisen from a bill of exchange drawn by the bankrupt, but stated neither presentment nor notice, it was holden insufficient. *Cooper v. Machin*, 1 Bing. 426, and see *Tucker v. Jones*, 2 Bing. 2. But a deposition stating that the deponent saw the bankrupt execute an assignment of his effects, &c., is sufficient evidence of the act of bankruptcy, without producing the assignment. *Kay v. Stead*, 2 Stark. 200. In giving the depositions, &c. in evidence, it is sufficient to shew that the proceedings are produced from the custody of the solicitor to the commission, or to prove the handwriting of one of the commissioners to them. *Collinson v. Hilliar*, 3 Camp. 31. In some instances, the Lord Chancellor, upon application, has ordered them to be produced. See 1 Ross, 276, 8 Ves. 314.

2. By stat 6 Geo. 4. c. 16. § 90, in any action by or against any assignee, or in any action against any commissioner or person acting under the warrant of the commissioners, for any thing done as such commissioner, or under such warrant, no proof shall be required at the trial of the petitioning creditor's debt or debts, or of the trading or act or acts of bankruptcy respectively, unless the other party in such action shall, if defendant, at or before pleading, and, if plaintiff, before issue joined, give notice in writing to such assignee, commissioner, or other person, that he intends to dispute some and which of such matters; and in case such notice shall have been given, if such assignee, commissioner, or other person shall prove the matter so disputed, or the other party admit the same, the judge before whom the cause shall be tried may (if he thinks fit) grant a certificate of such proof or admission; and such assignee, commissioner, or other person shall be entitled to the costs to be taxed by the proper officer occasioned by such notice, and such costs shall, if such assignee, commissioner, or other person shall obtain a verdict, be added to the costs; and, if the other party shall obtain a verdict, (see *Atkins v. Seward*, 1 B. & B. 275), shall be deducted from the costs which such other party would otherwise be entitled to receive from such assignee, commissioner, or other person.

This section differs materially from a section on the same subject in one of the repealed acts (49 Geo. 3. c. 121. § 10.): there the depositions of the petitioning creditor's debt, &c., were made evidence of these facts unless notice were previously given of an intention to dispute them; here, if no such notice

be given, the facts of there being a sufficient petitioning creditor's debt, trading, and act of bankruptcy, will be considered as admitted. It may be doubtful whether the present section is to be confined to those cases only where it appears upon the face of the record that the plaintiffs sue, or the defendants justify, as assignees under the commission; or whether it extends to all cases where the plaintiffs or defendants are really assignees, and where, if notice had been given, they would be obliged to prove the petitioning creditor's debt, &c. in order to sustain their action or defence. Perhaps the latter; for by sect. 44. of the same statute, in all actions against any person for any thing done in pursuance of this act, the defendant may plead the general issue and give the special matter in evidence. *And see Simmonds v. Knight*, 3 Camp. 251, 1 Ross, 358. *Rowe v. Lant*, 1 Gow, 24, *accord*. It extends to actions by the bankrupt against his assignees; and the bankrupt must, in such a case, give notice of his intention to dispute the petitioning creditor's debt, trading, or act of bankruptcy, even although the assignees know that the action is brought for the purpose of disputing the validity of the commission, *Ex p. Dick*, 1 Ross, 41; otherwise these facts will be taken as admitted. It extends to cases also, where the servants of the assignees are joined with them as defendants. *Gilman v. Cusins & al.*, 2 Stark. 182. But it is confined to the cases specified in the section; and therefore where the assignees are strangers to the record, if their title come incidentally in question, it must be proved by the ordinary evidence, although no notice of contesting the validity of the commission have been given by the opposite party. *Doe v. Liston*, 4 Taunt. 741. And on the other hand, in cases within the act, if the party have precluded himself, by his pleading or otherwise, from disputing the commission, the other party will not be obliged to give any evidence in support of the commission, whether a notice of an intention to dispute it have been given or not: as for instance, where, to debt on bond by assignees, the defendant pleaded payment only, it was holden that this was an admission of the assignees' right to sue, and that the only issue to try was the payment. *Corsbie v. Oliver*, 1 Stark. 76. So, in an action by the assignees against the petitioning creditor, the defendant cannot dispute the validity of the commission, on the ground of there not being a sufficient petitioning creditor's debt, although it appear, that in point of fact, upon a balance of accounts between the defendant and the bankrupt, there was not £100 due to the defendant. *Harmer v. Davis*, 1 Moore, 300. Where an auctioneer advertised the property of a bankrupt for sale, by the description of "the property of Derouvery, a bankrupt," Lord Kenyon held that, in an action against him

by the assignees for the produce of the sale, he was precluded from disputing the bankruptcy of Derouveray. *Maltby v. Christie*, 1 *Esp.* 340. So, if a person against whom a commission of bankrupt is sued out, obtain his discharge out of custody by a judge's order, on the ground of his bankruptcy, he is afterwards precluded from contesting the validity of the commission. *Goldie v. Gunston & al.*, 4 *Camp.* 381. But the bankrupt is not precluded from contesting the validity of the commission, by surrendering to it, *Mercer v. Wise & al.*, 3 *Esp.* 219, or by the mere formal words of a petition presented to him, for enlarging the time for his surrender, stating that he had been duly declared a bankrupt; *Id.*; nor is a creditor precluded from doing so, by having proved under the commission. *Rankin v. Horner*, 16 *East*, 191. *Stewart & al.*, v. *Richman*, 1 *Esp.* 108. If a person treat assignees, as such, in the course of transactions between them relative to the bankrupt's estate,—as for instance, if a debtor to the bankrupt pay the assignees a part of the debt owing by him,—he does not, indeed, thereby estop himself from afterwards disputing the commission, in an action between him and the assignees, but the fact will be *prima facie* evidence of the assignees' title, of which they need give no other evidence, and will throw the onus of impugning the commission upon the party; *Dickinson v. Coward*, 1 *B. & A.* 677; but a creditor's having proved his debt under the commission, will not have this effect as against him. *Rankin v. Horner*, 16 *East*, 191.

See the form of a notice by a defendant, of his intention to dispute the petitioning creditor's debt, &c., *Arch. Forms*, 510; the like by a plaintiff, *Id.* 511. It must be served upon the plaintiff or defendant, respectively, or his attorney, personally; *Howard v. Ramsbottom*, 3 *Taunt.* 526; leaving it with a maid-servant at the house of the assignee, or the like, will not be sufficient. *Id.* Upon the part of a defendant, it must be served either at the time of pleading, or before it; if he plead, without giving the notice, he cannot afterwards, even before his time for pleading has expired, again plead with notice, until he have first obtained leave to withdraw his former plea. *Poole v. Bell*, 1 *Stark.* 328. *Radmore v. Gould*, 1 *Wightwick*, 80. *Gardner v. Slack*, 6 *Moore*, 489. Upon the part of the plaintiff, it must be served before issue joined; serving it at the same time with the issue and notice of trial will be too late. *Richmond v. Heapy*, 4 *Camp.* 207. When given by a defendant, it is not considered as a part of his case at the trial, but he may prove the service of it, as soon as the assignees attempt to make out a *prima facie* case, by producing the commission, &c. *De Charme v. Waine*, 2 *Camp.* 324. If the notice be of an intention to dis-

pute the act of bankruptcy only, and depositions are read to prove the trading and petitioning creditor's debt, this does not put the whole file of proceedings in evidence; but if the opposite party wish to inspect other depositions, or have them read, he must call for them, as part of his case. *Black v. Thorn & al.* 4 Camp. 191.

Having thus treated of the particular evidence required in actions by or against assignees, I shall conclude this part of the subject by mentioning the other provisions of the statute, relative to evidence in actions generally.

By stat. 6 Geo. 4. c. 16. § 96, in all commissions issued after this act shall have taken effect, no commission of bankruptcy, adjudication of bankruptcy by the commissioners, or assignment of the personal estate of the bankrupt; or certificate of conformity, shall be received as evidence in any court of law or equity, unless the same shall have been first so entered of record as aforesaid (*see ante*, p. 3); and the person so appointed to enter matters of record as aforesaid, shall be entitled to receive for such entry of every such commission, adjudication of bankruptcy, assignment, or order for vacating the same respectively, having the certificate of such entry indorsed thereon respectively, the fee of two shillings each, and for the entry of every certificate of conformity, having the like certificate indorsed thereon, six shillings; and every such instrument shall be so entered of record upon the application of, or on behalf of any party interested therein, and on payment of the several fees aforesaid, without any petition in writing presented for that purpose; and the Lord Chancellor may, upon petition, direct any depositions, proceedings, or other matters relating to commissions of bankruptcy, to be entered of record as aforesaid, and also appoint such fee and reward for the labour therein of the person so appointed as aforesaid, as the Lord Chancellor shall think reasonable; and all persons shall be at liberty to search for any of the matters so entered of record as aforesaid: Provided that on the production in evidence of any instrument so directed to be entered of record, having the certificate thereon, purporting to be signed by the person so appointed to enter the same, or by his deputy, the same shall, without any proof of such signature, be received as evidence of such instrument having been so entered of record as aforesaid.

By stat. 6 Geo. 4. c. 16. § 97, in every action, suit, or issue, office copies of any original instrument or writing, filed in the office, or officially in the possession of the Lord Chancellor's secretary of bankrupts, shall be evidence to be received of every such original instrument or writing respectively; and if any such original instrument or writing shall be produced on any

trial, the costs of producing the same shall not be allowed on taxation, unless it appears that the production of such original instrument or other writing was necessary.

And lastly, as to the effect of admissions given in evidence : If the defendant have been examined before the commissioners, although perhaps improperly, upon a subject unconnected with the bankrupt's estate, his examination may be read against him at the trial. *Stockflath v. De Tastet*, 4 Camp. 10. *Mitward v. Forbes*, 4 Esp. 172. See *Deady and al. v. Harrison*, 1 Stark. 60. Where an auctioneer advertised the property of a bankrupt for sale, by the description of " the property of Derouveray, a bankrupt," Lord Kenyon held that, in an action against him by the assignees for the produce of the sale, he was precluded from disputing the bankruptcy of Derouveray. *Maltby v. Christie*, 1 Esp. 340. In an action by a bankrupt against the petitioning creditor, to try the validity of the commission, proof that the bankrupt and the petitioning creditor attended the second meeting of the commissioners, discussed before them the debt due to the petitioning creditor, and produced their accounts, and that the bankrupt objected to part of the petitioning creditor's account, and the commissioners ticked off such items in it as they allowed, and struck a balance of £169 as due to the petitioning creditor, was holden evidence to be left to the jury, of an implied admission by the bankrupt, from his conduct and demeanor before the commissioners, that such a balance was due. *Jarrett v. Leonard*, 2 M. & S. 265. In an action against a sheriff for a false return to a *fi. fa.*, but where the assignees of a bankrupt were substantially the defendants, and the defence rested on the validity of the commission, a declaration by one of the assignees, who was also the petitioning creditor, made subsequently to the commission, that the bankrupt did not owe him £100, was holden to be evidence for the plaintiff. *Dowden v. Fowle*, 4 Camp. 38.

*Witnesses.*] A creditor is not a competent witness to sustain a commission, whether he have proved under it or not, *Adams v. Malkin*, 3 Camp. 543, and see *1 Ross*, 387, 392, until he have released to the assignees, *Kooper v. Chapman*, *Peake*, 19. *Ambrose v. Clendon*, *Hardw.* 267, or sold his debt. *Granger v. Furlong*, 2 W. Bl. 1273. *Heath v. Hall*, 4 Taunt. 326. Even an assignee may prove the petitioning creditor's debts, &c. if he have released his claim as a creditor ; for as assignee he merely stands in the situation of trustee to the estate. *Tomlinson v. Wilkes*, 2 B. & B. 397, 5 Moors, 172. But no release to the assignees, or sale of debt, will render the petitioning creditor a competent witness to sustain the commission, *Green v. Jones*, 2

*Camp.* 411, although he is a competent witness to defeat it. *Lloyd v. Stretton*, 1 *Stark.* 40.

The bankrupt is not competent as a witness to increase the estate, *Bul. N. P.* 43, or to support the commission, *Chapman v. Gardiner*, 2 *H. Bl.* 279, or even to explain an equivocal act of bankruptcy, *Hoffman v. Pitt*, 5 *Esp.* 22, whether he be certificated or not. *Flower v. Herbert*, 2 *H. Bl.* 279. It has, indeed, been holden, that he cannot even be asked questions in cross-examination, as to any matter necessary to support the commission. *Wyatt v. Wilkinson*, 5 *Esp.* 187, but see *Bul. N. P.* 38. He is a competent witness, however, to diminish the fund; *Butler v. Cooke*, *Cowp.* 701. *Walker v. Walker*, *Cowp.* 70, *cit*; and even where his testimony would have the effect of increasing it, he may be rendered competent, by executing a release to his assignees of the surplus, and of his allowance, provided he be certificated; *Bul. N. P.* 43; otherwise not. *Masters v. Drayton*, 2 *T. R.* 496. And in an action by an assignee for money lost by the bankrupt at play, the bankrupt, who had obtained his certificate, being called as a witness, and objected to, it was holden that his competency was restored by three releases that were then given in evidence, namely, a release from the bankrupt to his assignee, a release from all his creditors to the bankrupt, and a release from the assignee (who was not a creditor) to the bankrupt. *Carter v. Abbott*, 2 *D. & R.* 575, 1 *B. & C.* 444. But a release by a bankrupt to his assignees under a second commission, will not render him a competent witness to increase the estate under that commission, unless he have paid 15s. in the pound; *Kennett v. Greenwollers*, *Peake*, 3, 3 *Esp.* 592; nothing can restore his competency in such a case, but a general release from all his creditors under the second commission. Nor will a release and certificate render a bankrupt a competent witness to support the commission. *Field v. Curtis*, 2 *Str.* 829. In an action by assignees against a judgment creditor, who had taken the bankrupt's goods in execution, the bankrupt has been holden a competent witness to prove that the creditor knew of his insolvency at the time of the execution; for his testimony neither went to affirm or disaffirm the bankruptcy, *Reed v. James*, 1 *Stark.* 134. But the proposition laid down by this case, unqualified as it is in the report, is at least doubtful: if, indeed, the bankrupt were uncertificated, perhaps he might be a competent witness, without a release, not for the reason given in the above case, but upon this ground, namely, that if the assignees recovered in the action, he would thereby be rendered liable to be taken in execution by the judgment creditor; but if he were certificated, he could not, I conceive, be rendered a competent witness,

without executing a release to his assignees ; for if the execution were successfully resisted, it would have the effect of increasing the estate.

The bankrupt's wife, also, cannot be examined touching her husband's bankruptcy ; *Ex p. James*, 1 P. Wms. 611 ; but she has been admitted to prove that a payment was made in contemplation of bankruptcy. *Jourdain v. Lefevre & al.* 1 Esp. 66.

*Judgment, &c.*] The judgment and execution in actions by or against assignees, are the same as in other cases.

By stat. 6 Geo. 4. c. 16. § 94, all persons from whom the assignees shall have recovered any real or personal estate, either by judgment or decree, are hereby discharged, in case the commission be afterwards superseded, from all demands which may thereafter be made in respect of the same by the person or persons against whom such commission issued, and all persons claiming under him or them ; and all persons who shall, without action or suit, *bonâ fide* deliver up possession of any real or personal estate to the assignees, or pay any debt claimed by them, are hereby discharged from all claim of any such person or persons as aforesaid in respect of the same, or any person claiming under him or them ; provided such notice to try the validity of the commission (*See* § 92, *ante*, p. 260, 261) had not been given, and been proceeded in, within the time and in manner aforesaid.

*Costs.*] Assignees are not, like executors, exempted from the payment of costs in any case, if nonsuit, or a verdict be given against them, but are liable to costs as other plaintiffs or defendants in ordinary cases. *See Andrews v. Sealy*, 8 Price, 212. *Ward v. Abrahams*, 1 B. & A. 367. *Ex p. Edwards*, Buck, 233.

If notice of an intention to dispute the petitioning creditor's debt, &c. have been given to them, and they succeed in proving it at the trial, or the other party admit it, we have seen (*ante*, p. 261) that the judge before whom the cause shall be tried, may, if he thinks fit, grant a certificate of such proof or admission ; and such assignee shall be entitled to the costs, to be taxed by the proper officer, occasioned by such notice ; and such costs shall, if such assignee shall obtain a verdict, be added to the costs ; and if the other party shall obtain a verdict, shall be deducted from the costs, which such other party would otherwise be entitled to receive from such assignee. 6 Geo. 4. c. 16. § 90. *See Ward v. Abrahams*, 1 B. & A. 367.

And by 6 Geo. 4. c. 16. § 44, in every action brought against any person for any thing done in pursuance of this act,—if there



be a verdict for the defendant, or if the plaintiff be nonsuit, or discontinue his action after appearance, or if upon demurrer judgment be given against the plaintiff, the defendant shall recover double costs. See this section, *ante*, p. 11.

An assignee sustaining a litigated commission, is entitled to his costs, as between attorney and client, out of the estate. *Ex p. Bryant*, 2 Rose, 1.

*Action commenced by bankrupt, and continued by the Assignees.]* Where an action has been brought by the bankrupt before the suing out of the commission, the assignees may either continue it, or abandon it, and bring another action for the same cause. If they continue it, they must carry on the proceedings in the name of the bankrupt until judgment; when, and not before, they may make themselves parties to the record by *seize facias*. *Kretchman v. Beyer*, 1 T. R. 463. and see *Winter v. Kretchman*, 2 T. R. 45.

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*Glyn & J. 260.*

### 5. Suits in Equity, &c.

Assignees may sue, and are liable to be sued, by bill in equity, in matters relative to the property of the bankrupt, as in ordinary cases. And a bill of foreclosure against them cannot be objected to, on the ground of no bargain and sale having been executed to them; for if they had no interest in the estate, the mortgages would not perfect his title by foreclosing them. *Bainbridge v. Pinhorn*, Buck, 135. If the suit has been commenced by the bankrupt, previously to the issuing of the commission, his bankruptcy does not actually abate the suit, but the court will allow the assignees a fortnight's time to consider whether they will adopt it or not, before the bill will be dismissed. *Wheeler v. Malins*, 4 Mud. 171. *Porter v. Car*, 5 Mad 80, Buck, 469. If the assignees adopt it, they do so by supplemental bill; See *Randall v. Mumford*, 18 Ves. 424; and if the bankruptcy occurs, pending proceedings in the Master's office after a decree, the court will, on motion, if necessary,

may the assignees from proceeding, till they make themselves parties to the suit by supplemental bill. *Williams v. Kinder*, 4 Ves. 387. *Russel v. Sharpe*, 1 V. & B. 500. In case of bankruptcy of the plaintiff, the practice now is, for the defendant to move that the assignees file a supplemental bill within a limited time, or the suit be dismissed; *Randall v. Mumford*, *supra*. *Porter v. Cox*, 5 Mod. 80, Buck, 409, and if a suit be commenced against a trader, his subsequent bankruptcy will not abate it. *Rutherford v. Miller*, 2 Aust. 458. and see *Whitcomb v. Minchin*, 5 Mod. 91, but though not in strictness abated, the suit is defective, and the plaintiff must file a supplemental bill to make the assignees parties. If the plaintiff, in a suit of foreclosure, becomes bankrupt, and the assignees have made themselves parties by supplemental bill, the court will not, on the application of the assignees, without the consent of the bankrupt, make an immediate decree under stat. 7 Geo. 2. c. 13. s. 11. *Thomas*, 2 S. & S. 188.

By stat. 7 Geo. 2. c. 13. s. 11. the assignees, with the consent of the majority of the creditors who shall have proved at any meeting, whereof and of an days notice shall have been given in the manner aforesaid, may compound with any debtor to any reasonable part of the debt, or may give time, or take security for the payment of such debt, or may submit any dispute between such assignees and any persons, concerning any matter relating to such bankrupt's estate, to the determination of arbitrators to be chosen by the assignees and the major part in value of such creditors, and the party with whom they shall have such dispute, and the award of such arbitrators shall be binding on all the creditors, and the assignees are hereby indemnified for what they shall do according to the directions aforesaid; and no suit in equity shall be commenced by the assignees without such consent as aforesaid: provided that if one-third in value or upwards of such creditors shall not attend at any such meeting, (whereof such notice shall have been given as aforesaid,) the assignees shall have power, with the consent of the commissioners, testified in writing under their hands, to do any of the matters aforesaid. For the forms, see u. p. 104. A general authority given by the creditors to the assignees for the above purposes will not be sufficient; the consent must be given specifically for each particular case. Per Lord Kenyon in *Neret v. Wallace*, 3 T. R. 23. *Ex p. Whitechurch*, 1 Atk. 90, 310. And the objection to a suit by the assignees, without consent of creditors, may be taken by plea. *Ocklinton v. Benson*, 2 S. & S. 265.

And by sect. 89, where the commission is issued against one

of several partners, the Lord Chancellor may, upon petition, authorise the assignees to commence or prosecute any suit in equity against a debtor of the partnership, in the names of themselves and of the remaining partners, in the same manner as if the suit were commenced with such partners' consent. See *this section, ante, p. 255.*

By sect. 91, in all suits in equity by or against the assignees, no proof shall be required, at the hearing, of the petitioning creditor's debt or debts, or of the trading or act or acts of bankruptcy respectively, as against any of the parties in such suit, except such parties as shall, within ten days after rejoinder, give notice in writing to the assignees of his or their intention to dispute some and which of such matters; and where such notice shall have been given, if the assignees shall prove the matter so disputed, the costs occasioned by such notice, to be taxed by the proper officer, shall, if the court see fit, be paid by the party or parties so giving such notice as aforesaid, and the service of such notice may be proved by affidavit upon hearing of the cause.

By sect. 92, the depositions as to the petitioning creditor's debt, trading and act of bankruptcy, shall be conclusive evidence of the matters contained in them, in all suits in equity by assignees for any debt or demand for which the bankrupt might have sustained a suit, if the bankrupt have not, within two calendar months after adjudication, (if he were within the United Kingdom at the issuing of the commission,) or within twelve calendar months (if he were not), given notice of his intention to dispute the commission, and have proceeded therein with due diligence. See *this section, ante, p. 260, and see Bell v. Tinney & al. 4 Mad. 373, and 6 Geo. 4. c. 16. § 93. ante, p. 258.* And, if such notice have not been given, persons from whom the assignees have recovered real or personal estate by judgment or decree, are discharged from all subsequent claim of the bankrupt in respect of the same, although the commission should be afterwards superseded. *Id. § 94, ante, p. 267, and see Hammond v. Atwood, 3 Mad. 158.*

By sect. 96, the commission, adjudication, assignment and certificate, must first be entered of record, before they can be received in evidence in any court of law or equity. See *this section, ante, p. 264.*

By sect. 97, office copies of all instruments or writings filed in the bankrupt office, or officially in the possession of the secretary of bankrupts, shall be received in evidence of such original instrument or writing. See *this section, ante, p. 264.*

As to petition by assignees, we have treated of that subject very fully already. See *ante, p. 209, &c.* If a petitioner become

bankrupt, his assignees, if they would have the benefit of the petition, must file a supplemental petition, otherwise the first one will be dismissed. *Ex p. Birdwood, Buck*, 99, *ante*, p. 236.

As to arbitrations and compositions with creditors, *see* 6 Geo. 4. c. 16. § 88. *ante*, p. 269.

### 6. Effect of the Death or Removal, &c. of Assignees.

Assignees are joint tenants of the estate and effects of the bankrupt; and, therefore, where one of them dies, the other has the whole by survivorship. And if another assignee be appointed in the place of the assignee deceased, (*see ante*, p. 118,) the surviving assignee should execute an assignment, &c. to himself and the assignee newly appointed. But if all the assignees die, it will be the best course for some of the creditors to petition the Lord Chancellor to vacate the former assignment and bargain and sale, and to have new assignees chosen and let the commissioners execute a new bargain and sale and assignment to the assignees when chosen. *See ante*, p. 122, 123, 118.

If all the assignees be removed, they must execute an assignment, &c. to the new assignees chosen in their place. Or if one of two or more assignees be removed, he should join with the others in an assignment, &c. to the remaining assignees and to the one chosen in his place; or if none be chosen, he should execute a release to the other assignees; for until the new assignment or release, his interest as assignee continues, with all its consequences. But if the removed assignee have absconded, or if it be otherwise impracticable to get him to execute the assignment or release, the original assignment, &c. should be vacated, on petition, and the commissioners will then execute a new assignment, &c. to the remaining assignee and the assignee newly chosen. *See ante*, p. 118. Or if an assignee become bankrupt, and a new assignee be chosen in his place, perhaps the better way will be to get the former assignment, &c. vacated, and a new assignment, &c. executed by the commissioners, as above mentioned. *See Ex p. Newton*, 1 Atk. 96. When the assignee is removed at his own request, besides executing a new assignment, &c. or release, he will be ordered also to indemnify the estate from the consequences of his withdrawing from the trust, by security to be approved of by the master, and must permit the new assignee to use his name (if necessary) in actions at law, &c. *Ex p. Thorley, Buck*, 231.

Where money was lodged in the bank in the joint names of five assignees, one of whom was dead and another had absconded; and the bank refused to pay it to the remaining three as-

signees, without an affidavit that the two others were dead: The Lord Chancellor, on petition, made an order that the money should be paid to the three assignees, intimating at the same time, that he had no doubt of his authority to do so. *Ex p. Collins*, 2 Car. 427. *Ex p. Hunter*, 1 Merivale, 408.

By stat. 6 Geo. 4. c. 16. § 67, whenever an assignee shall die, or a new assignee or assignees shall be chosen as aforesaid, (see § 66, *ante*, p. 122.) no action at law or suit in equity shall be thereby abated, but the court in which any action or suit is depending may, upon the suggestion of such death or removal and new choice, allow the name of the surviving or new assigned or assignees to be substituted in the place of the former; and such action or suit shall be prosecuted in the name or names of the said surviving or new assignee or assignees, in the same manner as if he or they had originally commenced the same. 185 that there is now no necessity for a supplemental bill, to make a new assignee party to a suit, as formerly. See *Cook*, 547. An assignee newly appointed, may also maintain a debt or a judgment obtained by the former assignee who has been removed. *De Cock v. Vaughan*, 10 East, 61.

If the assignee, so removed, be indebted to the estate for money received by him, it seems that the assignee newly appointed may maintain an action for money had and received against him for the amount of it. *Smith v. Jamison*, Peake, 213. See *Wray v. Barvis*, Id. 60. If an assignee be indebted to the bankrupt's estate, leaving real, but no personal property, the debt will be deemed a lien upon his real property, and the commissioners specialty creditors, a counterpart of the assignment, &c. being always executed by the assignees. *Palmrose v. Bromley*, 1 Atk. 88. and see *Wackerbush v. Powell*, 2 Glyn & J. 151.

## SECTION XIX.

### The Bankrupt.

*His duties.*] First: The bankrupt must "before three of the clock upon the forty-second day" after notice to him in writing, and notice in the Gazette, of the issuing of the commission, surrender himself to the commissioners, and sign or subscribe such surrender, and submit to be examined before them from time to

time upon oath; otherwise he shall be deemed guilty of felony. 6 Geo. 4. c. 16. § 112. *ante*, p. 179, 182, and *ante* the enlargement of the time for surrendering, see *ante*, p. 180.

2. By stat. 6 Geo. 4. c. 16. § 116, the bankrupt, after the choice of assignees, shall (if thereto required) forthwith deliver up to them upon oath, before a master, ordinary or extraordinary, in Chancery, or justice of the peace, all books of account, papers and writings relating to his estate, in his custody or power, and discover such as are in the custody or power of any other person; and every such bankrupt, not in prison or custody, shall at all times after such surrender attend such assignees upon every reasonable notice in writing for that purpose given by them to him, or left at his house, and shall assist such assignees in making out the accounts of his estate; and such bankrupt, after he shall have surrendered, may, at all seasonable times before the expiration of the said forty-two days, or such farther time as shall be allowed to him to finish his examination, inspect his books, papers and writings, in the presence of his assignees or any person appointed by them, and bring with him each time any two persons to assist him; and every such bankrupt, after he shall have obtained his certificate, shall upon demand in writing given to him, or left at his usual place of abode, attend the assignees, to settle any accounts between his estate, and any debtor to or creditor thereof, to attend any court of record to give evidence touching the same, or do any act necessary for getting in the said estate, for which attendance he shall be paid five shillings per day by the assignees out of his estate; and if such bankrupt shall, after such demand as aforesaid, not attend, or on such attendance refuse to do any of the matters aforesaid, without sufficient cause shewn to the commissioners for such refusal, and by them allowed, the assignees making proof thereof upon oath before the commissioners, the said commissioners may, by warrant directed to such person as they shall think proper, cause such bankrupt to be apprehended and committed to such prison as they shall think fit, there to remain until he shall conform to the satisfaction of the said commissioners, or of the Lord Chancellor.

3. He must attend the commissioners, upon every summons served upon him for that purpose; otherwise the commissioners may issue their warrant against him, and have him apprehended and brought before them, 6 Geo. 4. c. 16. § 36. *ante*, p. 184.

4. When before the commissioners, he must not refuse to be sworn, or to answer to the satisfaction of the commissioners any questions put to him by them touching any matter "relating to his trade, dealings, or estate, or which may tend to disclose any secret grants, conveyances or concealment of his lands, tene-

ments, goods, money or debts;" if he do, the commissioners may commit him. 6 Geo. 4. c. 16. § 36. *ante*, p. 186.

5. Upon his examination before the commissioners, he must discover all his real and personal estate, and how and to whom, upon what consideration and when, he disposed of, assigned or transferred any of such estate, and all books, papers and writings thereunto belonging, (except such part as shall have been really and *bond fide* before sold or disposed of in the way of his trade, or laid out in the ordinary expense of his family); and he must, upon such examination, deliver up to the commissioners, all such part of such estate, and all books, papers and writings relating thereto, as be in his possession, custody or power (except the necessary wearing apparel of himself, his wife and children); and he must not remove, conceal or embezzle any part of such estate of the value of £10 or upwards, or any books of account, papers or writings relating thereto, with intent to defraud his creditors: otherwise he shall be deemed guilty of felony. 6 Geo. 4. c. 16. § 112. *ante*, p. 193, 194.

6. He must join his assignees in the conveyance of the estate, if ordered by the Lord Chancellor to do so; 6 Geo. 4. c. 16. § 78. *ante*, p. 178; but he cannot be compelled to make out a good title. *Ex p. Blakes*, 1 Cox, 398. *Selkirk v. Davis*, 2 Rose, 291.

*His rights, privileges and disabilities.*] First: after he has surrendered, he has a right, at all seasonable times, before the expiration of the forty-two days, or such further time as shall be allowed to him to finish his examination, to inspect his books, papers and writings, in the presence of his assignees or any person appointed by them, and bring with him each time any two persons to assist him. 6 Geo. 4. c. 16. § 116, *supra*, and see *Ex p. Morgan*, *ante*, p. 201, *Ex p. Ross*, 1 Rose, 33. *Twoood v. Swanston*, 6 Ves. 465. *Ex p. Vaughan*, 14 Ves. 513.

2. By stat. 6 Geo. 4. c. 16. § 132, the assignees shall, upon request made to them by the bankrupt, declare to him how they have disposed of his real and personal estate, (see *Ex p. Harrison*, *Buck*, 246.) and pay the surplus, if any, to such bankrupt, his executors, administrators or assigns; and every such bankrupt, after the creditors who have proved under the commission shall have been paid, shall be entitled to recover the remainder of the debts due to him; but the assignees shall not pay such surplus until all creditors who have proved under the commission shall have received interest upon their debts, to be calculated and paid at the rate and in the order following; (that is to say,) all creditors whose debts are now by law entitled to carry interest, in the event of a surplus, shall first receive interest on

such debts at the rate of interest reserved or by law payable thereon, to be calculated from the date of the commission, and after such interest shall have been paid, all other creditors who have proved under the commission shall receive interest on their debts from the date of the commission, at the rate of four pounds *per centum*. See *Bremley v. Goodere*, 1 *Atk.* 80. *Banks v. Scott*, 5 *Mad.* 493. *Butcher v. Churchill*, 14 *Ves.* 573.

Under this section interest must be calculated upon the debt up to the time of payment of a dividend, then the amount of the dividend to be subtracted from the whole, and interest to be calculated upon the reduced principal up to the payment of the next dividend, and so forward. In the matter of *Higginbottom*, 2 *Glyn & J.* 123.

If the bankrupt can show a probable surplus, so as to give him an interest, the court on his petition will remove an assignee having an interest hostile to the creditors, or even permit him to sue an assignee who is an accounting party to the creditors, as where such assignee is a trustee under a trust deed for the benefit of the creditors. *Ex p. Archer*, 2 *Glyn & J.* 110.

3. He may reserve out of the property to be given up to his assignees, "the necessary wearing apparel of himself, his wife and children; at least he is not punishable for not delivering them up. See 6 *Geo.* 4. c. 16. § 112, *ante*, p. 193, and see *Ex p. Ross*, *ante*, p. 132.

As to his wife's property, see *ante*, p. 163. 105.

4. In some cases, he is entitled to a certain allowance out of his estate. By stat. 6 *Geo.* 4. c. 16. § 128, every bankrupt who shall have obtained his certificate, if the net produce of his estate shall pay the creditors who have proved under the commission ten shillings in the pound, shall be allowed five *per cent.* out of such produce, to be paid him by the assignees, provided such allowance shall not exceed four hundred pounds; and every such bankrupt, if such produce shall pay such creditors twelve shillings and sixpence in the pound, shall be allowed and paid as aforesaid seven pounds ten shillings *per cent.*, provided such allowance shall not exceed five hundred pounds; and every such bankrupt, if such produce shall pay such creditors fifteen shillings in the pound or upwards, shall be allowed and paid as aforesaid ten pounds *per cent.*, provided such allowance shall not exceed six hundred pounds; but if such produce shall not pay such creditors ten shillings in the pound, such bankrupt shall only be allowed and paid so much as the assignees and commissioners shall think fit, not exceeding three pounds *per cent.* and three hundred pounds. See *Groome v. Potts*, 6 *T. R.* 548. *Ex p. Grier*, 1 *Atk.* 207. *Ex p. Stiles & al.*, *Id.* 208. *Ex p. Gregg*, 6 *Ves.* 238. *Ex p. Tyrrell*, *Buck*, 345. The bankrupt's right to this allow-



ance, is an interest vested in him upon the declaration of a dividend, and, upon his death, goes to his representatives, *Ex p. Calcutt*, 1 Atk. 298; *Ex p. Trapp*, Id. 36; *Ex p. Safford*, 2 Glyn & J. 128, or upon his second bankruptcy, to his assignees. *Ex p. Miller*, 2 Glyn 213. And if the bankrupt is dead at the time of declaring the dividend, the right to the allowance vests in his personal representatives. *Ex p. Safford supra*. There are cases in which he shall not be entitled to it, mentioned in 6 Geo. 4. c. 16. § 130, *ante*, p. 204.

And by sect. 14, the commissioners or assignees may make him such allowance out of his estate, as shall be necessary for the support of himself or his family, until after he shall have passed his final examination. See *ante*, p. 184.

5. If he obtain his certificate, he is no longer liable for the amount of any debts or demands which might have been proved under his commission; 6 Geo. 4. c. 16. § 121; *ante*, p. 208. He may, indeed, revive his liability, by making a new promise to his creditors after the issuing of the commission; *Pear v. Bennett*, 4 Comp. 205. *Williams v. Dyde & all*; *Peake*, 38; *Roberts v. Morgan*, 2 Esp. 726. *Lynbury v. Weightman*, 5 Esp. 198. *Fleming v. Hayne*, 1 Stark. 370. *Alston v. Bolton*, 1 Doug. 182. *Treeman v. Fenton*, 4 Comp. 544. *Bayford v. Saunders*, 2 H. Bl. 116. *Birch v. Sharland*, 1 T. R. 715; but by stat. 6 Geo. 4. c. 16. § 131, no bankrupt, after his certificate shall have been allowed, under any present or future commission, shall be liable to pay or satisfy any debt, claim or demand, from which he shall have been discharged by virtue of such certificate, or any part of such debt, claim or demand, upon any contract, promise or agreement made or to be made after the swearing out of the commission, unless such promise, contract or agreement, be made in writing, signed by the bankrupt, or by some person thereto lawfully authorized in writing by such bankrupt, 38 & 39 J. A. 1000.

6. If he have not obtained his certificate, his after-acquired property no doubt may be claimed by his assignees. *Ante*, p. 166. But an uncertificated bankrupt may maintain an action for his personal labour, performed after the issuing of the commission; *Chippendale v. Tomlinson*, 10 Ch. 428. *Silk v. Osborne*, 1 Esp. 140; even where the assignees of a bankrupt employed him in carrying on the manufacture for the benefit of the creditors, and paid him money from time to time; this was held evidence of such contract between him and his assignees as would enable him to recover from them a reasonable compensation for his work and labour. *Coles v. Barrow*, 4 Taunt. 774. And he may maintain an action with relation to any after-acquired property, *Webb v. Fox*, 7 T. R. 391. *Fowler v. Down*, 1 B. & P. 44. *Evans v. Brown*, 1 Esp. 170. *Laroche & al. v.*

*Walslate, Peck, 140*, or sue upon any contract made with him, *Cunning v. Rosbach, Hutt, 172*, and *see Drayton v. Dals, 3 D. & R. 534*; *2 B. & C. 293*, unless his assignees interfere. *Kitchen v. Bartsch, 7 East, 53*.

7. A bankrupt, even uncertificated, cannot be arrested or taken in execution for any debt proved under the commission, *See 6 Geo. 4. c. 16. § 59. ante, p. 111—113*. And even for debts not proved, he cannot be arrested in coming to surrender, or during the forty-two days, or such further time as shall be allowed him for finishing his examination; *6 Geo. 4. c. 16. § 117. ante, p. 181—183*; and where the commissioners adjourn such examination *sine die*, he is privileged from arrest during such time, not exceeding three calendar months, as they shall, by indorsement on his summons, appoint. *6 Geo. 4. c. 16. § 118. ante, p. 186*.

8. If, before his bankruptcy, he had a lease, or an agreement for a lease, he is not liable for rent accruing due, or for the non-observance of covenants in it, after the date of the commission, if the assignees accept the term, or if the bankrupt deliver up the lease or agreement to the lessor within fourteen days after he shall have had notice that the assignees have declined the same. *6 Geo. 4. c. 16. § 75. ante, p. 127. and see sect. 76, ante, p. 136*.

9. His bankruptcy does not affect his rights as executor or administrator; *see ante, p. 168*; as trustee; *ante, p. 167*; he will even be allowed to prove upon his own estate for a debt due to him as sole executor, or the like. *Ante, p. 108*. Nor will the court remove the committee of a lunatic, merely on account of his bankruptcy. *Ex p. Proctor, Stansf. 538*. Bankruptcy also does not incapacitate an attorney from practising his profession; *Ex p. Brown, 2 Ves. 66*; it is no revocation of his will; *Charman v. Charman, 14 Ves. 580*; it is no abatement of suits in which he may be a party; *ante, p. 268*; and in arbitrations to which he is a party, it is no revocation of the submission. *Andrews v. Palmer, 4 B. & A. 250*. A bankrupt may be discharged under the insolvent debtors' act, notwithstanding a commission of bankruptcy has issued against him subsequent to his arrest, upon inserting an assignment in his schedule of all his estate, title, and interest in the property assigned, subject to the commission and payment of his debts under it. *Nunney v. Hall, 8 Moore, 423*.

[*Actions, &c. by or against him.*] First: he may petition, in all matters relating to his bankruptcy, in which he has a direct interest: as, for instance, to supersede the commission; *ante, p. 227, 220*; to enlarge the time for his surrendering; *ante, p. 180*, or the like.

2. Although uncertificated, he may maintain an action for the value of his personal labour performed since the issuing of the commission; or with relation to his after-acquired property, if his assignees do not interfere. *Ante*, p. 277. Or he may bring an action against any person who has seized his goods, or taken possession of his house, &c. under the commission, or against them by whose direction it has been done, in order to try the validity of the commission; see *Bryant v. Withers*, 2 M. & S. 123. 131. *Donovan v. Duff*, 9 East, 21; but he cannot contest the validity of the commission, after obtaining his discharge out of custody by reason of it; *Goldie v. Gunston*, 4 Camp. 381, *Watson v. Wace*, 5 B. & C. 153; and where a bankrupt had abandoned a petition for a *superseas*, and joined in a conveyance for part of his property, and solicited and procured the requisite number of signatures to his certificate, the Vice Chancellor, upon petition, restrained him from proceeding in an action which he had brought against the messenger to impeach the commission. *Ex p. Cutten*, 1 Glyn & J. 317. A bill filed by a bankrupt against a debtor to his estate, on the ground of the invalidity of the commission, and of collusion between the assignees and the debtor, was holden bad on demurrer; the proper course being to bring an action to try the validity of the commission, or to petition to remove the assignees. *Hammond v. Atwood*, 3 Mad. 158.

3. In actions against the bankrupt, for any cause of action barred by the certificate, he may, by stat. 6 Geo 4. c. 16. § 126, "plead in general that the cause of action accrued before he became bankrupt, and may give this act and the special matter in evidence; and such bankrupt's certificate, and the allowance thereof, shall be sufficient evidence of the trading, bankruptcy, commission, and other proceedings precedent to the obtaining such certificate." *Ante*, p. 210. As to what causes of action are barred by the certificate, see *ante*, p. 208. 73—107. This general plea of bankruptcy can be pleaded only in cases where the bankruptcy happened before the commencement of the action *Tower v. Cameron*, 6 East, 413. see *Charlton v. King*, T. R. 156. *Pearson v. Fletcher*, 5 Esp. 90, and the certificate was obtained before plea pleaded. *Harris v. James*, 9 East, 82. But where both the bankruptcy and certificate are after action brought, the plea must be special. So, where a surety brings an action for money paid by him after the issuing of the commission, the plea must be special. *Stedman v. Martinnant*, 12 East, 664. So, if the cause of action be barred by the certificate, but the certificate not obtained until after plea pleaded, it must be pleaded specially *puis darrein continuance*. The certificate, however, can never be given in evidence under the general issue.

*Gowland v. Warren*, 1 Camp. 363. As to the cases in which a certificate obtained in a foreign country may be set up as a defence to an action, *see ante*, p. 208.

There are some acts which render the certificate void, as mentioned *ante*, p. 204, &c. These may be given in evidence under the *similiter* to the general plea of bankruptcy; for as the general plea concludes to the country, a special replication to it would be bad, at least on special demurrer. *Wilson v. Kemp*, 2 M. & S. 549. *Hughes v. Morley*, 1 B. & A. 22. But where the bankruptcy is pleaded specially, they must be made the subject of a special replication.

*Death of bankrupt.*] If the bankrupt die before adjudication, the commission cannot be proved. *Ex p. Beale*, 2 V. & B. 29. But if he die after adjudication, the commissioners may proceed in the commission as they might have done if he were living. 6 Geo. 4. c. 16. § 26, *ante*, p. 63. Where he had presented a petition to supersede the commission, and died before he had surrendered, and the petition was revived by his personal representatives: the court thought, that as the surrender was prevented by the act of God, the same order should be made as if he had actually surrendered. *Ex p. Whittington*, Buck, 235; and the bankrupt dying either before or after the declaring a dividend sufficient to entitle him to an allowance, the right vests in his personal representative. *Ex p. Safford*, 2 Glyn & J. 128.

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## SECTION XX.

### The Creditor.

If a creditor prove his debt, he is entitled to his proportion of the net produce of the bankrupt's estate, as far as it goes, *ante*, p. 212, and to interest, if there be a surplus; *ante*, p. 274: and for so much of the debt as shall not be liquidated by the dividends, he may afterwards sue the bankrupt, if he have not obtained his certificate, and levy the amount upon his future effects. *See ante*, p. 208, &c. And the only instance of priority of debts, known to the bankrupt laws, are, the case of the landlord who distrains for his rent; *ante*, p. 86; the case of creditors who hold securities for their debts; *see ante*, p. 96, &c.; and

the case of friendly societies: *ante*, p. 168: in all other cases, all creditors who prove under the commission, are entitled to equal dividends of the effects, whether their debts be by specialty or simple contract merely. *See ante*, p. 212, &c.

But if a creditor do not prove his debt under the commission, he is barred altogether of any remedy as against the bankrupt, if the latter obtain his certificate; but if the bankrupt be uncertificated, he may at any time have the ordinary remedies against his person or future property.

A creditor attending to prove his debt, is privileged from arrest. *Ante*, p. 111.

A creditor may petition in all matters relating to the bankruptcy, in which he has an interest. *Ante* p. 232. His remedy for his dividend, is by petition, not action. *Ante*, p. 214.

If he swear falsely to a debt, he may be indicted and convicted of perjury. *See ante*, p. 18.

## CHAPTER II.

## OF PARTNERS, AND HEREIN OF JOINT AND SEPARATE COMMISSIONS.

COMMISSIONS against one or more or all of the partners in a firm, and the proceedings upon such commissions, shall form the subject of the present chapters.

*Act of Bankruptcy.]* Those only of the partners who have actually committed acts of bankruptcy, are to be deemed bankrupts. Where one of three partners in a bank, who resided at it, (the other two residing at a distance from it,) ordered it to be shut up and absented himself from it, and the bank stopped payment: this was holden to be evidence of an act of bankruptcy by the resident partner only, for the shutting up of the bank, and the stopping payment, are not of themselves acts of bankruptcy. *Mills v. Bennett*, 2 M. & S. 556. As to what are acts of bankruptcy, see *ante* p. 33—49.

*Petitioning creditor's debt.]* None but a joint creditor can sue out a joint commission against two or more partners of a firm; a separate creditor cannot.

But a joint creditor may sue out a separate commission against any one of the partners of the firm indebted to him, who has committed an act of bankruptcy. *Crispe v. Perritt, Willes*, 467. *Ex p. Crisp*, 1 Atk. 134. *Ex p. Dewdney*, 15 Ves. 499. *Ex p. Ackerman*, 14 Ves. 604. and see *post*. Even one of the partners of a firm, may sue out a commission against his co-partner, if his debt have not arisen out of the partnership; *Windham v. Paterson*, 1 Stark. 144; otherwise not, see *Antram v. Chase*, 15 East, 209, unless upon an account settled. *Ex p. Nokes*, 1 Montagu, B. L. 23.

As to who are joint creditors, who separate, *vide infra* *Proof of Debts.*"

*Commission.)* A joint commission may be sued out against all or some of the members of a firm, or a separate commission against one or each of them. Formerly, a joint commission could not be sued out against some of several members of a firm;

it must have been sued out against all the ostensible partners, *Allen v. Downs*, Willes, 474. n. *Streathfield v. Halliday*, 5 T. R. 779. But now, by stat. 6 Geo. 4. c. 16. § 16. any creditor or creditors whose debt or debts is or are sufficient to entitle him or them to petition for a commission against all the partners of any firm, may petition for a commission against one or more partners of such firm, and every commission issued upon such petition shall be valid although it does not include all the partners of the firm.

Formerly, also, if a joint commission were bad as against one partner, it was bad to all. *Per Lord Mansfield in Allen v. Downs*, *supra*. *Ex p. Martin*, 15 Ves. 114. But now, by stat. 6. Geo. 4. c. 16. § 16, in every commission against two or more persons, it shall be lawful for the Lord Chancellor to supersede such commission as to one or more of such persons; and the validity of such commission shall not be thereby affected as to any person as to whom such commission is not ordered to be superseded; nor shall any such person's certificate be thereby affected.

Where a joint commission is thus sued out against some of the members of a firm, and another commission is afterwards sued out against one or more of the remaining partners, the two commissions may be consolidated, thus: By stat. 6. Geo. 4. c. 16. § 17, if after a commission issued against two or more members of a firm, any other commission or commissions shall be issued against any other member or members of such firm, such other commission or commissions shall be directed to the commissioners to whom the first commission was directed; and immediately after the adjudication under such other commission or commissions, the commissioners shall convey and assign all the estate real and personal of such bankrupt or bankrupts to the assignees chosen in the first commission; and after such conveyance, all separate proceedings under such other commission or commissions shall be stayed, and such commission or commissions shall, without affecting the validity of the first commission be annexed to and form part of the same: provided that the Lord Chancellor may direct that such other commission or commissions be issued to any other commissioners, or that such other commission or commissions shall proceed either separately or in conjunction with the first commission.

Where the second commission is against the partners included in the first, and against others also, it would perhaps be deemed a case within the meaning of the above section. But the statute makes no provision as to a joint commission sued out after separate commissions, or where the second commission is against the same parties as the first. Two commissions

against the same person, cannot be in operation at the same time ; See *Warner v. Barber*, 8 Taunt. 176, 2 Moore, 71, 2 Rose, 432, ante, p. 221 ; the Lord Chancellor upon petition, will supersede or impound the one or the other of them, leaving that one in operation which will be most advantageous for the creditors. Where a separate commission issues against one partner, and a joint commission is subsequently sued out against him and others of the firm, as the latter is usually most advantageous to the creditors, for reasons which shall be mentioned presently, if it be valid and intended to be fairly prosecuted, the Lord Chancellor upon petition will supersede the separate commission, at the costs of the joint estate, *Ex p. Smith*, 1 Glyn & J. 256. *Ex p. Bachelor*, 2 Rose, 26. *Ex p. Brown*, 1 V. & B. 60. *Ex p. Hardcastle*, Cox, 397, 1 V. & B. 163. *Ex p. Roberts*, 1 Mad. 72, (unless there be some special reasons to the contrary, see *Ex p. Rowlandson*, 1 Rose, 89. *Ex p. Barwis*, 6 Ves. 601,) or if sales have taken place under the first commission, the court will merely impound it, so that it may remain a subsisting commission, and that at the same time it may not impede the operation or affect the validity of the second commission. *Ex p. Rowlandson*, 1 Rose, 416. *Ex p. Mason*, *Ex p. Rawson*, 1 V. & B. 160, 1 Rose, 423. *Ex p. Bachelor*, 2 Rose, 26. *Ex p. Tobin*, 1 Rose, 431, n.

*Opening the commission, and declaring the party a bankrupt.]* This is done in the ordinary way, as pointed out, ante, p. 65—71, and ii. p. 7—25, whether it be a separate or joint commission ; and in the case of a joint commission against two partners, against one of whom a separate commission had previously issued, the petitioning creditor under the separate commission was ordered to produce the proceedings under the separate commission, for the purpose of proving an act of bankruptcy of that partner under the joint commission. *Ex p. Harrison*, 2 Glyn & J. 135. Besides examining into the reality of the petitioning creditor's debt, the commissioners are desired, by Ord. *Apsley*, 12th February, 1774, if it be a single commission, to “ inquire whether the bankrupt was concerned in any and what partnership at the time of his bankruptcy ; and in case the same be a joint commission, then to inquire of how long standing the partnership has been, and whether any separate commission has before issued, and be then depending, against either and which of the said partners ; and that they do likewise in all cases inquire, whether the bankrupt ever, and how long before, had obtained a certificate under any former commission, or been discharged under any act for the relief of insolvent debtors : and in case, upon such enquiries, they have reason to apprehend



that the bankrupt in a single commission has been concerned in any partnership, or that a separate commission has before issued against either of the bankrupts in a joint commission, or that the bankrupt has before obtained his certificate under a former commission, or been discharged by any act for the relief of insolvent debtors, that the commissioners do proceed upon such inquiry, and to hear the evidence thereon, in the presence of the bankrupt, who is to be informed of the subject of the inquiry, and be at liberty to lay evidence before them relating thereto: And in case any of the matters aforesaid do appear to them, that they do, at the same time of making their certificate, also separately certify to the Lord Chancellor such of the aforesaid matters as they find to be true; and that they transmit such separate certificate to the secretary of bankrupts, to be laid before the Lord Chancellor, at the same time with the other certificate. *See the form of this certificate, ii. p. 165.*

*Seizure of the property by the messenger.]* This is done as in ordinary cases. *See ante, p. 71.* Under a joint commission, the messenger takes possession, not only of the partnership property, but also of the separate property of each partner. Under a separate commission, the messenger takes the possession of the separate property: in strictness, indeed, he may also put a person in possession of the partnership property; but this is seldom done, as the other partners always, either by consent, or through the intervention of the court, make arrangements for securing to the assignees the amount of so much of the joint property as they may be entitled to, namely, the bankrupt's share of the surplus of the property after payment of the joint creditors. As to what property passes under the assignment, *see post, p. 291.*

*Proof of debts.]* As to joint commissions: By *Ord. Loughb. 8th March, 1794*, it is ordered that the commissioners in a joint commission against two or more bankrupts, shall be at liberty, at any meeting or meetings for the proof of debts under such commission, to admit the proof of any separate debt or separate debts of any one or more of such bankrupts, under such joint commission; and such separate creditors shall be at liberty to assent to or dissent from the allowance of the certificate of the bankrupt or bankrupts of whom they shall be separate creditors. And it has been holden, that the creditors of a firm of three partners, may prove their debt under a commission against another firm, consisting of these three partners and others, within the meaning of this order. *Ex p. Worthing-*

ton, 3 *Mad.* 26. *Ex p. Wylie*, 2 *Rose*, 393. See *Ex p. Clegg*, 2 *Cor*, 372.

Separate debts are those for which the creditor can have his remedy at law, not against the whole firm, but against that partner only who contracted them; joint debts are those for which an action, if brought, must be brought against all the partners constituting the firm. Where a joint action is commenced against three, and two of them are outlawed, this does not make the debt a separate debt as against the third defendant; it still remains joint, although the plaintiff might have proceeded in the action against the third defendant alone. *Ex p. Dunlop, Buck*, 253. Where one of three partners, who also carried on a separate trade, being indebted to J. S. in £100, sent him a bill for £300, indorsed by the firm, and not by the partner individually, and received from him the balance in cash; upon the bankruptcy of the firm, this was holden to be a joint and not a separate debt. *Ex p. Kirby, Buck*, 511. See *Ex p. Seddon, Cor*, 49. *Ex p. Hay*, 15 *Ves.* 4. Where a dormant partner drew bills which were accepted by the ostensible partner for partnership purposes, the holder of the bills, who was ignorant of the partnership, was not allowed to prove both against the joint estate and the separate estate of the acceptor, but he was held entitled to prove against the separate estate of each partner. *Ex p. Husband*, 2 *G. & J.* 14. If an executor, assignee of a bankrupt, or trustee, be a partner in a firm, and apply the trust money to the purposes of the partnership: if he do this with the knowledge of his partners, the *cestui que trust* may treat it as a joint, or as a separate debt, at his option; *Ex p. Henton, Buck*, 386; but if without the knowledge of his partner, it can be treated as a separate debt only. *Ex p. Apsey*, 3 *Bib.* 266. A bill accepted in the name of a firm by one of the partners for his separate debt, and without authority of the co-partner, does not bind the firm, and therefore is but a separate debt, and not provable under a joint commission against both partners. *Ex p. Gauding*, 2 *Glye & J.* 118. Where two partners agreed to borrow money for the purposes of the partnership, but one only gave a bond for the payment of it, the other being witness to it, and the money was entered in the cash book of the partnership: it was holden that the lender of the money might treat this as a joint debt. *Ex p. Brown*, 1 *Atk.* 225. See *Ex p. Emley*, 1 *Rose*, 61. So, where two of several partners borrowed money, which they applied to the purposes of the partnership, and for which they gave their joint notes and their several bonds of each; and the firm had agreed to consolidate the separate debts, and to consider them the debts of the partnership: the lender of the money was allowed to treat this as a

joint debt of all the partners. *Ex p. Clowes*, 2 Bro. 595, *Cooke*, 274. and see *Ex p. Bingham*, *Cooke*, 534. *Emley v. Lye*, 15 East, 7. But there must be some degree of assent upon the part of the creditors, to change thus a separate into a joint debt, although slight circumstances will in general be deemed sufficiently indicative of it. *Ex p. Williams*, *Buck*, 13. *Ex p. Jackson*, 1 Ves. 131. So, if a man deal with a trader, without knowing that he has a dormant partner, he may afterwards treat his debt as a joint or separate debt, at his option. *Ex p. Hodgkinson*, 19 Ves. 291. *Ex p. Norfolk*, 19 Ves. 455. and see *Ex p. Reid*, 2 Ross, 84. Where one partner dies, and the remaining partners continue the partnership, and become bankrupt, those who were creditors before the death, may prove equally with those who became creditors after. *Ex p. Kendall*, 17 Ves. 514. But where one of two partners retired from the partnership, and the other covenanted to take the stock and pay the joint debts, and he subsequently carried on the trade on his own account: upon a joint commission afterwards against both, and the joint creditors insisting that their debts should be deemed the separate debts of the remaining partner by reason of the above covenant: it was holden that these debts must be deemed the joint debts of both, and that the covenant, not being assented to by the creditors, had not the effect of converting them into separate debts, either absolutely, or at the option of the creditors. *Ex p. Freeman*, *Buck*, 471. And for the same reason, where a retiring partner assigned his interest in the partnership property to his two partners, who continued the business and became bankrupt: it was holden that the creditors of the three could not prove upon the estate, even although the bankrupts had covenanted with the retiring partner to pay the debts of the former partnership. *Ex p. Fry*, 1 Glyn & J. 96. and see *Ex p. Wheeler*, *Buck*, 25. *Re Colbeck*, *Buck*, 48.

As to separate commissions: As it has always been deemed most equitable, that the separate estate of each partner should pay his separate debts, and the joint estate of all the partners pay the joint debts; and as, in fact, the assignees under a separate commission have but the separate estate, and the bankrupt's proportion of the surplus of the joint estate, after payment of the joint creditors, to distribute among the creditors who prove under the commission: it has been hitherto deemed right, therefore, to prevent joint creditors receiving any dividend under a separate commission, if there were any joint property, no matter how trifling, *Ex p. Peake*, 2 Ross, 54. *Ex p. Harris*, 1 Mad. 583. See *Ex p. Smith*, 1 Glyn & J. 74. *Ex p. Bradshaw*, *Id.*, 99, or if there were another partner, no matter whether solvent or insolvent, *Ex p. Kensington*, 14 Ves. 447. *Ex*

*p. Kendall*, 14 *Ves.* 449. *Ex p. Janson*, *Buck*, 227, 3 *Mad.* 229, unless it were a dividend out of the surplus of the separate estate, after payment of all the separate creditors, *Ex p. Copland*, 1 *Cox*, 420. *Ex p. Abell*, 4 *Ves.* 837, or unless the joint creditors agreed to pay the separate creditors 20s. in the pound; *Ex p. Chandler*, 9 *Ves.* 35; but if separate commissions were sued out against all the surviving partners of a firm, and there were no joint property whatever, in that case the court upon petition would allow the joint creditors to prove and receive dividends under the separate commissions of each partner, *Ex p. Hayden*, *Cook*, 261. *Ex p. Sadler*, 15 *Ves.* 52. *Ex p. Machell*, 2 *V. & B.* 216, and the creditor's having a pledge of joint property for part of his debt, would not in such a case be an objection to his proving for the remainder. *Ex p. Geller*, 2 *Mad.* 262. But although it was thought fair towards the separate creditors, that the joint creditors should be thus prevented from claiming a dividend under a separate commission, yet it was deemed only right that they should have a control or influence over the certificate and the choice of assignees, and they were therefore allowed to prove for those particular purposes. And accordingly, by stat. 6 *Geo.* 4. c. 16. § 62, it is enacted, that in all commissions against one or more of the partners of a firm, any creditor to whom the bankrupt or bankrupts is or are indebted, jointly with the other partner or partners of the said firm, or any of them, shall be entitled to prove his debt under such commission for the purpose only of voting in the choice of assignees under such commission, and of assenting to or dissenting from the certificate of such bankrupt or bankrupts, or of either of such purposes; but such creditor shall not receive any dividend out of the separate estate of the bankrupt or bankrupts until all the separate creditors shall have received the full amount of their respective debts, unless such creditor shall be a petitioning creditor in a commission against one member of a firm.

The petitioning creditor, indeed, was always an exception to this rule, and is now made so by the statute; he, although a joint creditor, may prove and receive dividends under any separate commission sued out by him; *Ex p. Ackerman*, 14 *Ves.* 604. *Ex p. De Tastet*, 17 *Ves.* 247. and see *Ex p. Swanzy*, *Buck*, 7; and if the separate commission be superseded, for the purpose of proceeding in a joint commission against all the partners, a right will be reserved to him to elect whether he will prove as a joint creditor, or as the separate creditor of the bankrupt against whom he sued out the commission. *Ex p. Smith*, 1 *Glyn & J.* 256. But if a joint creditor sue out a joint commission, he thereby binds himself to resort to the joint pro-

party only; *Ex p. Bolton*, 2 *Ros.*, 389; even where a commission is sued out against a trader, as "surviving partner" of another, this is deemed a joint commission, and the petitioning creditor will not be allowed to claim upon the separate property. *Ex p. Barnard & al.* 1 *Glyn & J.* 309.

There are some instances, we have seen, where creditors have the option of considering their debts joint or separate; See *Ex p. Heaton*, and other cases, *supra*; in these, and in all other cases where the creditor knowingly holds the joint and separate security of partners for the same debt, he may prove either as joint or separate creditor under a joint commission, or prove and receive dividends under a separate commission. But he cannot prove both on the joint and on the separate estate; he has merely an option to do the one or the other; *Ex p. Bevan*, 9 *Ves.* 223, 10 *Id.* 107. *Ex p. Hay*, 15 *Ves.* 4. *Ex p. Clowes*, *Cooke*, 274, 2 *Bro.* 595. *Ex p. Rowlandson*, 3 *B. Wms.* 405. *Ex p. Husband*, 2 *Glyn & J.* 6. and he must make his election before dividend. *Ex p. Husband*, 5 *Mud.* 419. *Ex p. Bentley*, 2 *Cox*, 218, and see *Ex p. Beilby*, 118 *Ves.* 70. *Ex p. Mason*, 1 *Rose*, 159. *Ex p. Liddell*, 2 *Ros.*, 84. But this rule does not extend to the case of a creditor who holds double security of the firm and of one of the partners of it, without knowing the partner to be one of the firm. Where a bill, drawn by A. upon and accepted by B. and C., was indorsed to a creditor of a firm consisting of A., B., C., and D., who was not aware at the time that A. B. or C. were partners: the creditor was allowed to prove upon the estates of the drawer and acceptors, against whom separate commissions had issued; *Ex p. Wensley*, 1 *Rose*; 441, 2 *V. & B.* 254. *Ex p. La Forest*. *Cooke*, 276. *Ex p. Benson*, *Id.* 278. *Ex p. Adam*, 1 *V. & B.* 495, 2 *Rose*, 36. *Ex p. Bigg*, 2 *Rose*, 87; although it would have been otherwise; if he had known of A. B. and C. being partners in the firm, at the time he received the bill. *Ex p. Bank of England*, 2 *Rose*, 82. Where two partners became indebted on bond and one of the partners conveyed real estates, his separate property, to the creditor as a security for the payment of the debt; held that the creditor could prove against the joint estate without giving up the real security, the joint estate being primarily liable and the separate estate only surety for the joint estate. *Ex p. Peacock*, 2 *Glyn & J.* 27.

On the other hand, if a creditor have two distinct debts due to him, one from a partner individually, the other from the firm, he must prove them accordingly on the separate and joint estates respectively. And when a creditor thus had distinct debts due to him, and he sued out execution against one of the partners upon a warrant of attorney given to him by the firm for his

joint debt : he was holden to be entitled to prove his separate debt under a commission which had issued against the other partner, without giving up his execution. *Ex p. Standerough*, 5 *Mad.* 89. and see *Young v. Hunter*, 16 *East*, 252. *Heath v. Hall*, 4 *Taunt.* 326 ; and where the bankrupts (partners) were indebted to their bankers in the sum of £27,000 and upwards, 18,000 of which was secured by their joint and several promissory notes, and the same sum and all future advances were further secured by the conveyance of real estate, the separate property of one partner, with joint and several covenants from each of the partners for the payment of the whole balance ; held that the bankers were entitled to prove against the joint estate upon the promissory notes, and to proceed on the several covenants for the residue of the debt. *Ex p. Ladbroke*, 2 *Glyn & J.* 81.

As to proofs by partners or their representatives : If one of two partners become bankrupt, and the solvent partner pay all the joint debts, he will be entitled to prove upon the separate estate of his partner, for such portion of the money he was obliged to pay out of his private funds in order to make up the deficiency between the joint assets and the debts, as the bankrupt partner would have been obliged to pay if he had not become bankrupt. *Ex p. Watson, Buch*, 449, 4 *Mad.* 477. and see *Ex p. Taylor*, 2 *Rose*, 175. *Ex p. Hunter, Buch*, 652. *Ex p. Ogleby*, 2 *Rose*, 177, 3 *V. & B.* 133. One of three partners in a bank advanced money to the business upon the security of the other partners, and afterwards retired from the business, and by the deed of dissolution the remaining partners covenanted to repay the same by four instalments and to indemnify against the partnership debts ; the continuing partners after paying one instalment became bankrupt, when two other instalments were due, and the retaining partner paid some partnership debts ; held that the remaining instalments and the debts paid were proveable under the commission. *Parker v. Ramsbottom*, 5 *Dow. & R.* 138. The assignees of the joint estate are sometimes allowed to prove on the separate estate ; and the assignees of the separate estates on the joint estate. Where traders in partnership also carry on business individually, if the separate trades be distinct from the joint, proof will in general be allowed, as between the different estates ; but not where the separate trades are merely branches of the partnership concern. *Ex p. Barbe*, 11 *Ves.* 413. *Ex p. Hesham*, 1 *Rose*, 146. *Ex p. Ring*, *Ex p. Freeman*, *Ex p. Johns*, *Cooke*, 534 ; and see *Ex p. Sillitos*, 1 *Glyn & J.* 374. And accordingly, where a joint commission was sued out against a firm, and a separate commission against one of the partners, an application by

the assignees under the separate commission to be allowed to prove on the joint estate for the amount of a sum of money brought by their bankrupt into the partnership beyond his share, was refused. *Ex p. Burrell, Cooke*, 528. But where some of the partners of a firm carry on a distinct trade, and in the course of dealing in the distinct trade one of the firms becomes indebted to the other, such debt can be proved by the creditor firm under a commission against the other firm. *Ex p. Castell, 2 Glyn & J.* 124. If one of several partners withdraw monies out of the partnership, and apply them to his separate use, this will not entitle the joint estate to prove upon the separate, if he did so with the knowledge of his partners, or (what is tantamount thereto) made entries of the monies, thus drawn out by him, in the partnership books; but if he conceal the fact, or disguise it in the partnership books, it will be otherwise. *Ex p. Smith*, 6 *Mad.* 2. *Ex p. Harris*, 1 *Rose*, 437, 2 *V. & B.* 210. *Ex p. Cust, Cooke*, 531.

As to mutual debts, it may be necessary to observe that they must be owing by and to the same bankrupt or set of bankrupts; you cannot set off a joint against a separate debt, or a separate against a joint debt, or a debt due from three partners against a debt due to two of them, or the like. *Stainforth v. Fellowes*, 1 *Marsh.* 184. *Ex p. Ross; Buck*, 125. *Ex p. Edwards*, 1 *Atk.* 100. *Ex p. Twogood*, 11 *Ves.* 517. *Ex p. Christie*, 10 *Ves.* 105. See *Ex p. Quintin*, 3 *Ves.* 248. *Ex p. Huckey*, 1 *Mad.* 577. *Ex p. Hanson*, 1 *Rose*, 156.

*Choice of Assignees.*] Under a separate commission, not only the separate creditors, but (by stat. 6 Geo. 4. c. 16. § 62, *ante*, p. 287) joint creditors also, whose respective debts amount to 10*l.* or upwards, may vote in the choice of assignees.

But under a joint commission, none but joint creditors can vote in the choice of assignees; the separate creditors cannot; *Ex p. Parr*, 2 *Rose*, 76, 18 *Ves.* 65, 70. *Ex p. Hamer*, 1 *Rose*, 321; even in the case of a commission against three, it was holden that the joint creditors of two of them could not vote in the choice of assignees. *Ex p. Jepson*, 19 *Ves.* 224. But where it appeared that the assignee under a joint commission had no interest in the separate estates, the court, upon application, ordered a meeting of the separate creditors, with liberty to them to appoint an inspector of the separate estates. *Ex p. Batson*, 1 *Glyn & J.* 269. This inspector is a kind of assignee of the separate estates, appointed to watch over the interests of the separate creditors: no property however vests in him, nor can he do any act as assignee; he can merely watch the proceedings of the joint assignees, and see that they do their duty with

respect to the separate property, and those creditors who have claims upon it. *See Ex p. Miles*, 2 Rose, 68. *Ex p. Bassaro*, 1 Rose, 266. *Ex p. Simpson*, 2 Rose, 337.

In other respects, the choice of assignees under joint and separate commissions, is the same as in ordinary cases. *See ante*, p. 115, &c.

*The Assignment, and what passes under it.*] The assignment and bargain and sale are the same, and executed in the same manner, as in ordinary cases. I shall confine my observations in this place, therefore, to the property which passes under them.

1. Under a joint commission, not only the joint, but the separate property also, pass to the assignees. And by *Ord. Loughb.* 8th March, 1794, after allowing separate creditors to prove under joint commissions (*see ante*, p. 284,) it is ordered, that the commissioners do cause distinct accounts to be kept of the joint estate, and also of such separate estate or estates, and that what shall be found to belong to the separate estate or estates shall be applied in the first place in or towards satisfaction of the debts of the respective separate creditors; and in case there shall be any overplus of the joint estate, after all the joint creditors shall be paid and satisfied their whole demands, that the share or shares, interest or interests, of the bankrupt or bankrupts (whose separate estate or estates is or are to be applied in manner before directed) in such overplus, be carried to the account of his or their separate estate or estates, and be applied in or towards satisfaction of his or their separate debts: And in case there shall be any overplus of the separate estate or estates of such bankrupt or bankrupts, after all their separate creditors shall be paid and satisfied their whole demands, that the overplus of such separate estate or estates be carried to the account of the joint estate, and be applied in or towards satisfaction of the joint debts: And that the costs of taking such accounts be paid out of such separate estate or estates, and be settled by the commissioners, in case the parties differ about the same.

So, if one partner die, and the surviving partner become bankrupt, the separate creditors of the deceased partner shall be paid their debts out of the separate estate, and the joint creditors will be entitled to the surplus. *Gray v. Chiswell*, 9 Ves. 118. Where a trader was partner in several firms, each of which became bankrupt, the court ordered the surplus of his separate estate to be applied in discharge of the joint debts of the respective firms, in proportion to the amount of debts proved under each commission. *Ex p. Franklyn, Buck*, 332.



Under the above order, the separate creditors are not entitled to interest on their debts, before the surplus of the separate estate is distributed amongst the joint creditors, they are not entitled to interest, until the joint creditors also have been paid 20s. in the pound. *Ex p. Boardman, Cook*, 208, *Cox*, 275. *Ex p. Reeve*, 9 *Ves.* 588. *Ex p. Clarke, Ves.* 677. But where there was a surplus of the joint estate, under a joint commission, it was holden that the creditors were entitled to interest. *Ex p. Reeve*, 9 *Ves.* 588.

Where, under a joint commission, the joint creditors elected to prove and take dividends upon the separate estate of one of the partners, on the ground that the other was a dormant partner, (*see ante*, p. 285,) which had the effect of diminishing the separate estate, and creating a surplus of the joint estate : it was holden that the separate creditors had a lien upon the surplus of the joint estate, to the extent that their funds had been diminished by the election of the joint creditors. *Ex p. Reid*, 2 *Rose*, 84. So, on the other hand, where the joint and separate estates being liable for a debt to the crown, more was levied on the joint estate than its proportion, contribution was decreed between the two estates. *Rogers v. Mackenzie*, 4 *Ves.* 752.

As to what is joint, what separate, property : Separate property consists of such property, real or personal, as each partner in a firm is possessed of, distinct from and independent of the partnership ; joint property consists of the goods, chattels, and effects of the whole firm jointly, the debts due to them, and the goods of others in their possession, order, and disposition. Real estates, purchased with joint funds, though conveyed to one partner only, are, nevertheless, joint property ; but if the estates are so conveyed to one partner, under an agreement that they should be his separate property, and he would be a debtor to the partnership for the purchase-money, the estates will be separate property. *Smith v. Smith*, 5 *Ves.* 193. and *see Thornton v. Dixon*, 3 *Br. C. C.* 198. A ship belonging to, and registered in the name of one partner, but in the possession, order, and disposition of the firm, is deemed joint property, and shall be distributed as such. *Ex p. Burn*, 1 *Jac. & W.* 378. But where the property of one partner, and insured against fire by him, was in the possession, order, and disposition of the firm, and was consumed by fire before their bankruptcy : it was holden that the money received by the partner from the insurance company was not joint, but separate property. *Ex p. Smith*, 3 *Mad.* 63. So, if one joint owner insure his interest or share, and a loss happen, the money received by him upon the policy will be separate, and not joint property. *Ex p. Parry*, 5 *Ves.* 575.

But land purchased by one partner, in his own name, but with the partnership funds, will be deemed the joint property of the partnership, and not the separate property of the vendee. *Semb. Lyster v. Dolland*, 1 Ves. 435, Cook, 536. If one partner die, and the survivor become bankrupt, the property of the partnership remaining in specie, still remains joint property. *See Gray v. Chinnell*, *supra*. But if one partner retire from the firm, and assign his interest to the others, they covenanting to pay the debts of the firm, the property thereupon ceases to belong to the former firm; and if the remaining partners afterwards become bankrupt, the creditors of the former firm cannot prove and receive dividends under the commission. *Ex p. Freeman*, Buck, 471. *Ex p. Fry*, 1 Glyn & J. 96. *Ex p. Ruffin*, 6 Ves. 419. and see *Ex p. Fell*, 10 Ves. 347. *Ex p. Williams*, 11 Ves. 6. *Ex p. Rowlandson*, 1 Ross, 416. But where, under an agreement by a retiring partner to assign all partnership stock, &c., a further act, namely, a third person joining in the security, remained to be done, in order to complete the transfer: upon the bankruptcy of the remaining partner, before the transfer was so completed, it was holden that the property of the partnership remaining in specie in the hands of the bankrupt, was joint property, and distributable as such. *Ex p. Wheeler*,

owners of a ship,  
but as tenants in  
common, his share passes  
to his part-owners in  
2 Ross, 76. And  
if cargo, the cost  
is paid only £410  
for the remainder:  
assignees were an-

titled to a full third of the value of the ship and cargo, and profits of the adventure, and that other part-owners could not, by voluntarily discharging the note, stand in his place for any part of the profits, &c. *Smith v. Da Silva*, Comp. 469.

Where a joint commission is taken out against a firm, the several members of which also carried on other trade under several distinct firms, the court, upon petition, will order distinct accounts to be taken of the joint property of all the partners, of the joint property of each firm, and of the separate property of each partner, and order distribution accordingly. *Ex p. Martin*, 3 Bro. 15. and see *Curtis v. Perry*, 6 Ves. 747. But if there be several firms, and one only (in which some of the partners in the others are not engaged) become bankrupt, there can only be the common order for keeping distinct accounts of the joint and personal estate. *Ex p. Parker*, Cook, 272.

2. Under a separate commission, all the separate property, and such part of the joint property as the bankrupt himself would be entitled to, pass to the assignees. They are entitled to his share of the balance of the partnership funds, after the payment of all the partnership creditors. And where one of several partners became bankrupt, and a separate commission issued against him, his partners were allowed to deduct from his portion of the balance of the partnership property, the amount of sums, which he had embezzled, of the partnership property, *Goss v. Dufresnoy, Davies*, 371, 2 *Eq. Ca. Abr.* 110. *Richardson v. Gooding*, 2 *Vern.* 293. On the other hand, the separate estate will be ordered to be reimbursed out of the joint estate, any expenses incurred in recovering joint property. *Ex p. Rutherford*, 1 *Rose*, 201. And if, after the bankruptcy of one partner, the others continue to carry on the trade with the partnership property, the assignees will be entitled also to the share of the profits, their bankrupt would have had, if no commission had been sued out against him. See *Crawshay v. Collins*, 1 *Jac. & W.* 267, 15 *Ves.* 218. *Smith v. Stokes*, 1 *East*, 363.

If the assignees under a separate commission, get possession of the joint property, the court, upon the petition of a joint creditor, will order the assignees to keep distinct accounts of the separate and joint estate, and apply them to the payment of the separate and joint debts respectively, in the same manner as when separate creditors prove under a joint commission. *Ex p. Tute, Cook*, 267. *Ex p. Burnaby, Id.* 269. *Ex p. Hayward, Id.* 268. *Ex p. Aspinwall, Ex p. Mervey, Ex p. Hill, Id.* 271. And even although they put a person in possession of the joint property, as they are only tenants in common with the solvent partner, they cannot exclude him from the possession also; and where they had done so, and were about to sell the joint property, the court, upon a bill filed for the purpose, granted an injunction. *Allen v. Kilbre*, 4 *Mad.* 464. In such a case, the court will, in general, upon the petition of the solvent partner, appoint him receiver of the joint estate, he giving security for the due execution of his office, to be approved of by the master, and accounting as such receiver from time to time as the master shall direct. *Ex p. Stoveld*, 1 *Glyn & J.* 303.

3. Sometimes the joint and separate creditors agree to consolidate the estates, and that all the creditors, joint as well as separate, may come in *pari passu*. But the court have no authority to order this; and even where the creditors consent to it, the court will not confirm it, without first referring the matter to the commissioners, to enquire if the proposed consolidation be for the benefit of the creditors generally. *Ex p. Strutt*, 1 *Glyn & J.* 29.

Where a joint commission was sued out after a separate commission, and the assignees under the separate estate had obtained a verdict against a debtor to the estate; the court of law, upon application, ordered the money recovered to be paid into court, until a petition, pending before the Lord Chancellor, to supersede the separate commission, were decided. *Hodgkinson & al. v. Travers*, 1 B. & C. 257.

*The bankrupt's surrender and examination.*] These are the same as in ordinary cases. See *ante*, p. 179. 166. 193.

*The certificate.*] Under a joint commission, "separate creditors shall be at liberty to assent to or dissent from the allowance of the certificate of the bankrupt or bankrupts, of whom they shall be separate creditors." *Ord. Loughb.* 8 March, 1794. And under separate commissions, joint creditors may prove, "for the purpose only of voting in the choice of assignees under such commission, and of assenting to or dissenting from the certificate of such bankrupt or bankrupts." 6 Geo. 4. c. 16. § 62. *ante*, p. 287.

In the case of a joint certificate of two partners, if one of them die before allowance, and before he have made the usual affidavit of the certificate being obtained fairly and without fraud, the court, upon petition, will permit the certificate to be advertised for allowance as to the survivor. *Ex p. Cosart*, 1 Glyn & J. 248. *ante*, p. 203. and see *Ex p. Currie*, 10 Ves. 51.

As to the effect of the certificate: a certificate under a joint commission bars both joint and separate debts; *Howard v. Poole*, 2 Str. 995. *Wickes v. Strahan*, *Id.* 1157; so, by a certificate obtained under a separate commission, joint as well as separate debts are discharged. *Ex p. Yale*, 3 P. Wms. 24. n. 1 Sel. N. P. 232. But by stat. 6 Geo. 4. c. 16. § 121, no such certificate shall release or discharge any person who was partner with such bankrupt at the time of his bankruptcy, or who was then jointly bound, or had made any joint contract, with such bankrupt. *Ante*, p. 208. And therefore, if a creditor sue out a commission against one of two partners on a joint debt, and receive a dividend out of the joint estate, this will not prevent him from bringing an action against the partner for the residue. *Ex p. Bolton*, Buck, 12, *Per Cur.* *Heath v. Hall*, 4 Taunt. 326, even although the bankrupt partner have obtained his certificate. Nor does signing the certificate of the surviving partner release the estate of a deceased partner. *Sleech's case*, 1 Merivale, 570.

See upon this subject generally, *ante*, p. 199—211.

**Dividend.]** This is made and declared in the same manner as in ordinary cases. Where the accounts of the separate and joint estates are kept distinctly, according to Lord Loughborough's order (*ante*, p. 291), the order for a dividend sometimes notices both, and declares a dividend upon both estates, if there be assets, but it is in general better, not only to keep distinct accounts of the joint and separate estates, but to make distinct orders of dividend as to each. See *ii*. p. 165.

**Costs.]** Where a separate commission is superseded for a subsequent joint commission, the petitioning creditor will be allowed his costs out of the joint estate, *Ex p. Bachelor*, 2 *Rose*, 26. *Ex p. Brown*, 1 *Rose*, 434, 1 *V. & B.* 60, unless the separate commission had been issued against good faith. *Ex p. Brown*, *supra*. *Ex p. Mason*, 1 *Rose*, 423.

The joint fund is not chargeable with the expenses incurred by conducting examinations, &c. before commissioners, for joint creditors under a separate commission. *Ex p. Longman*, 1 *Rose*, 303.

For costs generally, see *ante*, p. 215 ; and for costs upon petitions, see *ante*, p. 243.

**Supersedeas.]** We have seen (*ante*, p. 282, 283.) that where a joint commission is sued out after a separate commission, the separate commission will in general be superseded, or impounded, if sale have been made under it ; but not, if the joint commission be such as cannot be sustained. *Ex p. Roberts*, 1 *Mad.* 72.

By stat. 6 *Geo.* 4. c. 16. § 16, in every commission against two or more persons, it shall be lawful for the Lord Chancellor to supersede such commission, as to one or more of such persons ; and the validity of such commission shall not be thereby affected as to any person as to whom such commission is not ordered to be superseded, nor shall any such person's certificate be thereby affected. *Ante*, p. 282.

As to the *supersedeas* generally, see *ante*, p. 220.

**The Assignees.]** Assignees under a separate commission, upon petition to the Lord Chancellor, may obtain leave to commence and prosecute actions at law, or suits in equity, jointly in their own names and the names of the remaining partners. 6 *Geo.* 4. c. 16. § 89. *ante*, p. 255.

See as to assignees generally, *ante*, p. 246, &c.

**The bankrupts.]** Formerly, under a joint commission one partner alone could not be entitled to allowance. *Ex p. Powell*,

1 *Mad.* 68. But now, by stat. 6 Geo. 4. c. 16. § 129, in all joint commissions under which any partner shall have obtained his certificate, if a sufficient dividend shall have been paid upon the joint estate and upon the separate estate of such partner, he shall be entitled to his allowance, although his other partner or partners may not be entitled to any allowance.

But he is not entitled to double allowance, out of the joint, and out of the separate estate; *Ex p. Bate*, 1 *Bro.* 453, *Cook*, 512; nor is he entitled to allowance at all, unless both the joint and separate creditors are paid the proportion of their debts required by statute. *Ex p. Powell*, 1 *Mad.* 68. See *Ex p. Holmes*, 2 *Rose*, 95, 3 *V. & B.* 137. *Ex p. Farlow*, 1 *Rose*, 421, 2 *V. & B.* 209.

As to other matters relating to bankrupts, their certificate, &c. generally, see *ante*, p. 272, &c.

## CHAPTER III.

THE LAW RELATING TO THE BANKRUPTCY OF  
MEMBERS OF PARLIAMENT.

By stat. 6 Geo. 4. c. 16. § 9, if any such trader, (*see ante*, p. 23, &c.) having privilege of parliament, shall commit any of the aforesaid acts of bankruptcy, (*see ante*, p. 33, &c.) a commission of bankrupt may issue against him, and the commissioners and all other persons acting under such commission, may proceed thereon in like manner as against other bankrupts; but such person shall not be subject to be arrested or imprisoned during the time of such privilege, except in cases hereby made felony.

And by sect. 10, if any creditor or creditors of any such trader having privilege of parliament to such amount as is hereinafter declared requisite to support a commission, (*see ante*, p. 49,) shall file an affidavit or affidavits in any court of record at Westminster, that such debt or debts is or are justly due to him or them respectively, and that such debtor, as he or they verily believe, is such trader as aforesaid, and shall sue out of the same court a summons, or an original bill and summons against such trader, and serve him with a copy of such summons, if such trader shall not, within one calendar month after personal service of such summons, pay, secure, or compound for such debt or debts to the satisfaction of such creditor or creditors, or enter into a bond in such sum, and with two sufficient sureties, as any of the judges of the court out of which such summons shall issue shall approve of, to pay such sum as shall be recovered in such action or actions, together with such costs as shall be given in the same, and within one calendar month next after personal service of such summons, cause an appearance or appearances to be entered to such action or actions, in the proper court or courts in which the same shall have been brought, every such trader shall be deemed to have committed an act of bankruptcy from the time of the service of such summons, and any creditor or creditors of such trader to such amount as aforesaid may sue out a commission against him, and proceed thereon in like manner as against other bankrupts. *See 2 Arch. Pr. B. R. 96. Arch. Forms, 458. and see Hunter v. Campbell, 3 B. & A. 273. Jameson v. Campbell, 5 B. & A. 250. Ex p. Harcourt, 2 Rose, 204. (For the form of deposition, proving such act of bankruptcy, see ii. p. 10.*

And by sect. 11, if any decree or order shall have been pronounced in any cause depending in any court of equity, or any order made in any matter of bankruptcy or lunacy against any such trader having privilege of parliament, order such trader to pay any sum of money, and such trader shall disobey, the same having been duly served upon him, the person or persons entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof, pursuant to such decree or order, may apply to the court by which the same shall have been pronounced to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such trader, being personally served with such last-mentioned order eight days before the day therein appointed for payment of such money, shall neglect to pay the same, he shall be deemed to have committed an act of bankruptcy from the time of the service thereof, and any such creditor or creditors as aforesaid may sue out a commission against him, and proceed thereon in like manner as against other bankrupts. (*For form of deposition, proving an act of bankruptcy under this section, see ii. p. 167, post.*)

And lastly, by stat. 52 Geo. 3. c. 144, all members of the House of Commons, found and declared bankrupt, are rendered incapable of sitting or voting in the house, for twelve months from the issuing of the commission, unless in the mean time the commission be superseded, or their creditors be paid the full amount of their debts; and if the commission be not superseded or the debts fully satisfied within the twelve months, the commissioners are then to certify the same to the Speaker, and thereupon the election is declared void; and the Speaker, during the next recess, shall cause notice thereof to be inserted in the Gazette, and in fourteen days afterwards shall issue his warrant to the Clerk of the Crown, to make out a new writ for the election of another member, in the room of the member whose seat is thus vacated. (*For form of the certificate, see ii. p. 168, post.*)





## BOOK II.

### THE PRACTICE AND FORMS IN CASES OF BANKRUPTCY.

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#### THE DOCKET AND COMMISSION.

*In order to sue out a commission of bankrupt, the first step is to get the petitioning creditor to make the necessary affidavit of his debt, and to execute the usual bond to the Lord Chancellor.*

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#### *Affidavit of the Petitioning Creditor's Debt.*

*John Nokes, of———street, in the city of London, merchant, maketh oath, and saith, that Joseph Styles, of———street, in the said city of London, builder, is justly and truly indebted unto him, this deponent, [and to George Nokes his partner,] in the sum of one hundred pounds, and upwards; and that the said Joseph Styles is become bankrupt, within the true intent and meaning of the statute made and now in force concerning bankrupts, as this deponent is informed and verily believes.*

John Nokes.

{ Sworn at the public office, South-  
ampton Buildings, Chancery  
Lane, this———day of———  
one thousand eight hundred  
and———, before me———.

\* \* To be engrossed on plain paper; blank forms may be had at the stationers. It may be sworn either before a Master in Chancery in town, or before a Master Extraordinary in the country, not being the solicitor to the commission or one of the commissioners.

The addition given to the bankrupt in the affidavit, must be such as to shew that he is a trader within the meaning of the statute. See i. p. 21.

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#### *The like, where there are two or more Petitioning Creditors.*

John Nokes, of [as above], James Johnson, of———, and George Denton, of———, severally make oath and say, and first this deponent John Nokes for himself saith that Joseph

Styles, of ——— [as above], is justly and truly indebted unto him this deponent in the sum of [eighty] pounds; and this other deponent James Johnson for himself saith that the said Joseph Styles is justly and truly indebted unto him this deponent in the sum of [sixty] pounds; and this other deponent George Denton for himself saith that the said Joseph Styles is justly and truly indebted unto him this deponent and to William Nares this deponent's partner in the sum of [sixty] pounds. And these several deponents John Nokes, James Johnson, and George Denton, further say, that the said Joseph Styles is become bankrupt, within the true intent and meaning of the statute made and now in force concerning bankrupts, as these deponents are informed and very believe.

Sworn" [&c. as above].

John Nokes.

James Johnson.

George Denton.

*The like for a Country Commission.*

*Same as the above forms, to the end, adding]* And that the commission, when obtained, is intended to be executed at the towu of Kingston upon Hull, or within ten miles of the same, and not within forty miles of London.

Sworn at Kingston upon Hull,  
the ——— day of ———, one thousand }  
eight hundred and twenty-five }  
before me,

John Nokes.

E. C.

Master Extraordinary in Chancery.

\* \* \* *The solicitor then writes at the foot of the affidavit the names of the commissioners to whom he intends the commission to be directed, thus :*

Commissioners' names.

A. B. }  
C. D. } Esquires.

E. F. }  
G. H. } Gentlemen.  
I. K. }

\* \* \* *When this affidavit is transmitted to the agent, and before it is lodged in the office of the Secretary of Bankrupts, the agent must indorse upon it his name, and the name and place of residence of the country solicitor. Ord. Loughb. 5th Nov. 1793. Thus :*  
" L.M. Temple, agent for O.P. of Kingston upon Hull, solicitor."

*Affirmation of a Quaker.*

John Nokes, of——[*as above*], being one of the people called Quakers, upon his solemn affirmation saith that" [*&c. and instead of "deponent," write "affirmant."*]

Affirmed at" [*&c. as above.*]

---

*Bond of the Petitioning Creditor to the Lord Chancellor.*

Know all men by these presents, that I, John Nokes, of——street, in the city of London, merchant, am held and firmly bound to the Right Honourable the Lord High Chancellor of Great Britain, in two hundred pounds of good and lawful money of Great Britain, to be paid to the said Lord High Chancellor or his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal, dated this——day of——in the——year of the reign of our Sovereign Lord King George the Fourth, and in the year of our Lord one thousand eight hundred and twenty——.

The condition of this obligation is such, that if the above bounden John Nokes shall, as well before the major part of the commissioners, to be named in a commission of bankrupt against Joseph Styles of——, builder, dealer and chapman, as upon any trial at law in case the due issuing forth of the said commission shall be contested and tried, prove that the said Joseph Styles is justly and truly indebted to the said John Nokes, [and to George Nokes his partner], in the sum of one hundred pounds or upwards, and that the said Joseph Styles is become bankrupt within the true intent and meaning of the statute made and now in force concerning Bankrupts, and if the said John Nokes shall cause the said commission to be executed according to the directions of the said Act of Parliament, then this obligation to be void: otherwise to remain in full force and virtue.

John Nokes (L.S.)

Sealed and delivered }  
in the presence of  
[Two Witnesses.] }

\* \* \* *To be engrossed on unstamped paper, and, in the case of country commissions, by the country solicitor, and attested by the Master Extraordinary before whom the affidavit of debt is sworn and by some other person; in the case of town commissions, it is prepared at the office of the Secretary of Bankrupts, for which you pay £1 : 7s. and attested by one of the clerks there and some other person.*

*When the affidavit is sworn and the bond executed, leave them at the office of the secretary of Bankrupts. This is is termed "striking the docket;" and before you proceed thus far, you should search in the docket book, to ascertain whether a docket have not already been struck against the same party by some other person. Upon the affidavit and bond being left in the office, the clerk will prepare the petition; will annex the affidavit and bond to it, and thereupon obtain the Lord Chancellor's fiat. Pay him £1: 13s. 6d. in part of the fees for the petition and the fiat, which amount to £2: 13s. 4d. in town commissions and to £1: 16s. 4d. in country commissions. Call at the office of the Patentee of Bankrupts, and bespeak the commission; pay £5: 2s. 8d. and a further fee of £2: 2s. 6d. if the commission be sealed at a private seal; and you will afterwards, by application at the same office, obtain the commission with the petition and fiat annexed to it; where a supersedeas issues you pay at the Secretary of Bankrupt's office, a further sum of £2: 11s. 0d. and at the patentee of Bankrupt's office a further fee of £2: 0s. 2d. and if the supersedeas is sealed at a private seal an additional fee of £2: 2s. 6d.*

*In town commissions, while the petition is preparing, you may speak to your messenger, to be in readiness to summon the commissioners.*

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### *The Petition.*

To the Right Honourable John Singleton Lord Lyndhurst, Baron Lyndhurst of Lyndhurst, in the county of Southampton, Lord High Chancellor of Great Britain.

In all humble manner complaining, sheweth unto your Lordship, your orator John Nokes, of——street, in the city of London, merchant, as well for himself as for all other the creditors of Joseph Styles, of —— street, in the said city of London, builder, dealer, and chapman, that whereas the said Joseph Styles, using and exercising the trade of a builder, upon just and good causes being indebted unto your orator in the sum of £100 or upwards, of late (that is to say) about the month of —— last past did become bankrupt, within the meaning of the statute made in the sixth year of the reign of his present Majesty King George the Fourth, intituled "An Act to amend the laws relating to Bankrupts." In tender consideration whereof, may it please your lordship to grant unto your orator his Majesty's most gracious commission, to be directed to such and so many wise, honest, and discreet persons as to your Lordship shall seem meet, authorizing them thereby not only coa-

cerning the said bankrupt, his body, lands, tenements, freehold and customary goods, debts, and other things whatsoever, but also concerning all other persons, who by concealment, claim, or otherwise, do or shall offend touching the premises or any part thereof, contrary to the true intent and meaning of the said statute, to do and execute all and every thing or things whatsoever, as well for and towards satisfaction and payment of the said creditors, as towards and for all other intents and purposes, according to the ordinance and provision of the said statute concerning bankrupts.

And your orator shall ever pray, and so forth.

——day of——1825.

*\* \* This petition is prepared at the office of the Secretary of Bankrupts ; the affidavit and bond are annexed to it ; and the following fiat is written at the foot of it, by the deputy secretary, and signed by the Lord Chancellor.*

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*Fiat.*

Let a commission of bankrupt issue as prayed, and be directed to

William Gould, Esquire, The Hon. James Abercomby, John Turner, Esquire, Sir George Francis Hampson, Bart. John Beames, Esquire.	}	H. Deputy.
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Lyndhurst, C.

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*The Commission.*

George the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to our trusty and well beloved A.B., C.D., E.F., G.H., esquires, and I.K, gentleman, greeting: Whereas we are informed that Joseph Styles, of——street, in the city of London, using and exercising the trade of a builder, about the month of ——last past did become bankrupt, within the statute made against bankrupts, to the intent to defraud and hinder John Nokes of——street, in the said city of London, merchant, and other his creditors, of their just debts and duties to them due and owing: we, minding the due execution of the statute made in the sixth year of our reign, intituled “ An Act to amend the laws relating to Bankrupts,” upon trust of the wisdom, fi-

delity, diligence, and provident circumspection which we have conceived in you, do by these presents name, assign, appoint, constitute, and ordain you our special commissioners, hereby giving full power and authority unto you, four or three of you, to proceed according to the said statute in force concerning bankrupts, not only concerning the said bankrupt, his body, lands, tenements, freehold and customary, goods, debts, and all things whatsoever, but also concerning all other persons, who by concealment, claim or otherwise, do or shall offend, touching the premises or any part thereof, contrary to the true intent and meaning of the said statute; and to do and execute all and every thing or things whatsoever, as well for and towards satisfaction and payment of the said creditors, as towards and for all other intents and purposes, according to the ordinance and provision of the same statute; willing and commanding you, four or three of you, to proceed to the execution and accomplishment of this our commission, according to the true intent and meaning of the said statute, with all diligence and effect. Witness ourself at Westminster, the—— day of ——, in the——year of our reign.

Lyndhurst.

\* \* \* You pay for this Commission and sealing at the Patentees of Bankrupts' office, £5 : 2s. 8d. if it be sealed at a public seal; if at a private seal, there is a further fee of £2 : 2s. 6d.

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*Having obtained the commission, the messenger you appoint, in the case of a town commission, will summon a majority of the commissioners to whom the commission is directed, to a private meeting, at Walker's Rooms, or at some coffee-house convenient to the parties. See i. p. 2. In country commissions, the solicitor to the commission usually calls upon the commissioners, or writes to them if they reside at any distance, and appoints with them the time and place of the private meeting, which is not unfrequently at the solicitor's office; and we may recollect that, by stat. 6 Geo. 4. c. 16. s. 23. such of the barristers (not exceeding three at each meeting,) named in the commission, as shall be willing to attend, shall be the acting commissioner or commissioners, and shall be entitled to his or their summonses and fees accordingly, in priority to any of the other commissioners in the said commission named. See i. p. 7.*

*The commissioners having met, according to the summonses or appointment abovementioned, the commission is opened and proceeded upon, in the manner directed in the next section.*

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## PRIVATE MEETING.

Before the time appointed for the first private meeting, it may be advisable to prepare, 1. A memorandum of the commissioners having qualified by taking the usual oath; 2. A deposition of the petitioning creditor as to his debt; 3. A deposition as to the trading; 4. Depositions of witnesses as to one or more acts of bankruptcy; and 5. A memorandum of the adjudication. The following are the forms; all of which may be had in blank, at the stationers.

### *Memorandum of the Commissioners having qualified.*

Examinations, depositions, and other proceedings, had and taken under a commission of bankrupt awarded and issued against *Joseph Styles, of ——— street, in the city of London, builder, dealer, and chapman, bearing date at Westminster the ——— in the ——— year of the reign of our Sovereign Lord King George the Fourth, directed to A. B., C. D., E. F., and G. H., esquires, and I. K., gentleman, upon the petition of John Nokes, of ——— street, in the city of London, merchant.*

At the Baptist's Head Coffee House,  
London, the 2d day of August, 1825.

Memorandum, that we, *A. B. C. D., and E. F., esquires, whose names are hereunder written, being the major part of the commissioners named and authorised in and by a commission of bankrupt awarded and issued against Joseph Styles of ——— street, in the city of London, builder, dealer, and chapman, bearing date at Westminster the ——— day of ——— one thousand eight hundred and twenty-five, did personally administer to each other, and severally take, the oath prescribed in and by an act of parliament, made in the sixth year of the reign of his present Majesty, King George the Fourth, intituled "An Act to amend the laws relating to Bankrupts," for commissioners to take before they proceed to act in any commission of bankrupt, before we acted in the execution of the said commission.*

Witness [*the solicitor or his clerk.*]

*For the form of the oath, see i. p. 8.*



*Deposition of the petitioning Creditor, as to his Debt.*

At the Baptist's Head Coffee House,  
London, the 2d day of August, 1825.

*John Nokes of — street, in the city of London, merchant, being sworn and examined on the day and year and at the place above mentioned, before the major part of the commissioners named and authorised in and by a commission of bankrupt awarded and issued and now in prosecution against Joseph Styles of — street, in the said city of London, builder, dealer, and chapman, upon his oath saith, that the said Joseph Styles was, at and before the date and suing forth of the said commission, and still is, justly and truly indebted unto this deponent [and to George Nokes his partner] in the sum of one hundred and seventy-four pounds, for goods sold and delivered by this examinant [and his said partner] to the said Joseph Styles, between the year one thousand eight hundred and — and the — day of — in the year one thousand eight hundred and — [stating some time before the date of the act of bankruptcy. See i. p.*

*John Nokes.*

\* \* This form may be filled up from Arch. Forms, 5—14. See as to the nature of the petitioning creditor's debt, i. p.

*This deposition must state the nature and amount of the debt, how and for what consideration the same arose, and also the particular time or times at which the same accrued. Ord. Loughb. 26. Nov. 1798.*

*Deposition as to the Trading.*

At the Baptist's Head Coffee House,  
London, the 2d day of August, 1825.

*James Bradby of — street, in the city of London, malster, being sworn and examined, on the day and year and at the place abovesaid, before the major part of the commissioners named and authorised in and by a commission of bankrupt awarded and issued and now in prosecution against Joseph Styles of — street, in the said city of London, builder, dealer, and chapman, upon his oath saith, that he hath known the said Joseph Styles for the space of six years now last past, during which time the said Joseph Styles did use and exercise [the trade and business of a builder, and sought] and endeavoured to get his livelihood thereby, as others of the same trade and business usually do.*

*James Bradby.*

*The above deposition to be altered according to the nature of the trading, the following forms (to be inserted instead of the words between brackets) are suitable for the trades of most usual occurrence.*

**Banker.**—The trade and business of a Banker and as such was intrusted with the money, goods and effects belonging to other persons, and merchandized therewith, and sought, &c.

**Scrivener.**—The trade or profession of a Scrivener, receiving other men's monies [and estates] into his trust [and custody] and sought, &c.

**Stockbroker.**—The trade and business of a Broker, in buying and selling stock by commission, and procuring insurances on ships and cargoes for lucre and gain, and sought, &c.

**Factor.**—The trade of a Factor, by buying and selling goods and commodities, as agent, or factor for others and sought, &c.

**Pawnbroker.**—The trade and business of a Pawnbroker, and as such received goods and effects by way of pawn or pledge, and lent monies thereon, and sought, &c.

**Merchant.**—The trade of a Merchant, and did trade from this kingdom of England to Ireland, and divers other places beyond the seas, and sought, &c.

**Underwriter.**—The trade or business of an Underwriter, by insuring ships or their freight or other matters against the perils of the sea, and sought, &c.

**Hosier.**—The trade or business of a Hosier, by buying and selling stockings, gloves and other goods, and commodities, and sought, &c.

**Shoemaker.**—The trade or business of a Shoemaker, by buying leather and other goods and commodities, and working and converting the same into shoes and boots, and selling the same so worked and converted, and sought, &c.

**Tailor.**—The trade of a Tailor, in buying cloth, silk, linen, buckram and other materials, and making them up into clothes, and selling the same when so made up, and sought, &c.

**Innkeeper.**—Exercised and carried on the trade and business of an Hotel Keeper, and sought, &c.

**Livery Stable Keeper.**—The trade or business of a Livery Stable Keeper, by buying horses and carriages, and other goods and commodities, and letting the same out for hire.

**Hackneyman.**—Exercised and carried on the trade and business of a hackneyman, by buying horses and carriages, and letting the same to hire, and sought, &c.

\* \* Take care that the description thus given of him as a trader, bring him within the words and meaning of the statute. See i. p. 21.

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*Private Meeting.**Act of Bankruptcy.*

\* \* If the act of bankruptcy is the filing a declaration of insolvency, according to the 6th Geo. IV. c. 16, s. 6, it is proved by producing the Gazette.

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*The form of the declaration to be filed in the Bankrupt Office, to constitute an act of bankruptcy under the 6th Geo. IV. c. 16. s. 6.*

I, Joseph Styles, of &c. builder, do hereby, by virtue of an act passed in the sixth year of the reign of his present Majesty, intituled "An Act to amend the laws relating to bankrupts," declare that I am insolvent and unable to meet my engagements with my creditors. As witness my hand, this 1st day of June, 1825.

Joseph Styles.

Witness,

T. L. Temple, solicitor.

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*Advertisement in the Gazette.*

Notice is hereby given that a declaration was filed on the 24th day of April, 1827, in the office of the Lord Chancellor's Secretary of Bankrupts, signed and attested according to the statute passed in the sixth year of his present Majesty's reign, intituled "An Act to amend the laws relating to bankrupts," by Joseph Styles, of, &c. merchant, that he is in insolvent circumstances, and is unable to meet his engagements with his creditors.

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*Deposition of the Act of Bankruptcy.*

*When the Act of Bankruptcy is under the 6th Geo. 4. c. 6, s. 10. the Trader having privilege of Parliament.*

At the Baptist's Head Coffee House, London,  
the 2d day of August, 1826.

John Nokes, of the city of London, merchant, and T. L. of New Inn, in the county of Middlesex, gentleman, being severally sworn and examined, on the day and year and at the place above-mentioned, before the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued and now in prosecution against Joseph Styles, of — street, in the city of London, builder, severally make oath and say, and first this examinant, John Nokes, for himself saith, That on or about the 4th day of March, now last past, he, this examinant, by virtue of an act of parliament made and passed in the sixth year of the reign of his present Majesty

King George the Fourth, intituled, "An Act to amend the laws relating to bankrupts," did make an affidavit in his Majesty's Court of King's Bench at Westminster, that the said Joseph Styles was justly and truly indebted unto him, this examinant, in the sum of £300, and that the said Joseph Styles was, as this examinant verily believed, a trader within the description of the statute relating to bankrupts. And this examinant further saith, that the said Joseph Styles hath not paid, secured, or compounded the said debt, nor hath he entered into any bond to pay such sum as should be recovered in the action, in pursuance of and according to the directions of the said act of parliament, to the knowledge or belief of this examinant. And this examinant T. L. for himself saith, that he did on the said — day of — last, file the said affidavit so sworn by the said other examinant, John Nokes, as aforesaid, in the said Court of King's Bench. And that he did, on the — day of — last, sue out of the same Court of King's Bench a summons against the said Joseph Styles, and on the next day, being the — day of — last, did serve him the said Joseph Styles personally with a copy thereof. And this examinant T. L. further saith, that the said Joseph Styles was, at the time of the filing of the said affidavit, and of the suing out and serving of the said summons, and still is, a trader having privilege of parliament, as this examinant hath been informed and verily believes.

\* \* This act of bankruptcy, so far as that the debt has not been paid, secured or compounded for, to the satisfaction of the Creditor, must be deposed to by such creditor, he being the only competent witness to that fact; but his evidence is not admissible as to facts which can be deposed to by other witnesses. *Ex. p. Harcourt, 2 Rose, 203.*

*Keeping House.] John Ward, of — [clerk to Joseph Styles, of — street, in the city of London, builder,] being sworn, &c. (as in the preceding deposition) upon his oath saith, that on the — day of — last past, the said Joseph Styles, at the dwelling house and place of business of the said Joseph Styles, in — street, aforesaid, gave orders unto this examinant, that if any of the creditors of him the said Joseph Styles should come to his said house and enquire for him, this examinant should deny the said Joseph Styles being at home. And this examinant further saith, that after he had so received such orders as aforesaid, between the hours of — and — on the day aforesaid, one Mr. John Nokes, a creditor of the said Joseph Styles, came to the house aforesaid of the said Joseph Styles and enquired of this examinant if the said Joseph Styles was then at home, and told this examinant that he called for payment of the balance of an account then due and*

owing to him the said John Nokes from the said Joseph Styles ; and thereupon this examinant, in pursuance of the order he had so received from the said Joseph Styles, and knowing the said John Nokes to be a creditor of the said Joseph Styles, denied to the said John Nokes that the said Joseph Styles was then at home ; in consequence of which said denial the said John Nokes left the said house without seeing or speaking to the said Joseph Styles. And this examinant further saith that at the time he so denied to the said John Nokes that the said Joseph Styles was at home, as aforesaid, the said Joseph Styles was at home and in his said house.

John Ward.

\* \* It is not sufficient to state the act of bankruptcy in the words of the statute ; the facts constituting it must be specially set forth, with sufficient certainty as to time, place, &c. ; and it is for the commissioners afterwards to judge whether the facts so stated amount in law to an act of bankruptcy, See i. p. It would be useless, therefore, to give forms of depositions of the several acts of bankruptcy, as there are few cases perfectly alike in all their circumstances. However, a few forms in those cases which most usually occur may not be deemed unnecessary ; not that they are to be considered precedents which must be followed, but forms merely shewing the manner in which such depositions are to be framed, the certainty required in them, &c. &c.

*Departing the Realm.]* That in the month of — last past, the said Joseph Styles left England, with an intention of going to the kingdom of France, and that he is now residing at Boulogne, in the said kingdom of France, and has not since been within any part of the realm of England, as this examinant has been informed and verily believes. And this examinant further saith that there are several creditors of the said Joseph Styles, who have not been able to recover or obtain payment of the debts respectively due to them by the said Joseph Styles, in consequence of his being out of the realm aforesaid ; and this examinant verily believes that the said Joseph Styles went abroad as aforesaid with the intent to delay or defeat his creditors, some or one of them, in the recovery of the debts due and owing from him to them respectively.

*Departing from his dwelling house.]* That in the month of — last past, the said Joseph Styles departed from [his dwelling house" or "his lodgings in the house of one James Gordon] in — street, in the said city of London, (the same being his usual place of habitation,) and has not since returned to the same. And this examinant saith, that he verily believes the said Joseph Styles secretes himself from his creditors, for fear of being arrested by them, or some or one of them, for debt.

*Remaining in prison.]* That on the — day of — last, this examinant arrested the said Joseph Styles, by virtue of a

certain warrant granted by the sheriff of — upon a writ of our lord the king of *capias ad respondendum*, issued from his majesty's court of King's Bench, at the suit of one John Nokes, and indorsed for bail for one hundred and seventy-four pounds ; and this examinant further saith,\* that the said Joseph Styles hath been from the time of the said arrest as aforesaid, until the present time, and still is, detained in the custody of this examinant, by virtue of the writ aforesaid.

\* \* *To be made by the sheriff's officer, and the writ and warrant produced at the time. Or if the imprisonment have been partly in custody of the sheriff's officer, and partly in the county gaol, then from the \* thus: " that the said Joseph Styles hath been detained in the custody of this examinant from the time of the said arrest as aforesaid, until the — day of — last past, when this examinant conveyed the said Joseph Styles to the gaol for the county of —, and delivered him, together with the warrant under and by virtue of which this examinant arrested him as aforesaid, unto the gaoler of the said gaol, to be detained by him in the said gaol under and by virtue of the said warrant." Then add a deposition by the gaoler, " that on the — day of — last past, the said Joseph Styles was brought to the gaol for the county of — and delivered to him as such gaoler as aforesaid, by him to be detained in the said gaol, under and by virtue of a certain writ of our lord the king of *capias ad respondendum*, at the suit of one John Nokes, and indorsed for bail for one hundred and seventy-four pounds, and also under and by virtue of a certain warrant made thereon, by the sheriff of the said county of — ; and that the said Joseph Styles hath remained from thence, hitherto, and still remains in custody in the said gaol at the suit aforesaid.*

\* \* *Or if the whole of the 21 days imprisonment have been in custody of the marshal of the King's Bench or warden of the Fleet, then thus: " that on the — of — last past, the said Joseph Styles, having rendered in discharge of his bail at the suit of John Nokes, was thereupon committed by Mr. Justice — to the custody of the marshal of the King's Bench prison," or " to his majesty's prison of the Fleet, and that he hath remained from thence hitherto, and still doth remain in such custody, at the suit aforesaid." This deposition must be made by the Clerk of the Papers, and the committitur produced at the same time before the commissioners. See *Salt v. Thomas*, 3 B. and P. 188.*

*Fraudulent conveyance.] That on the — day of — one thousand eight hundred and twenty —, this examinant was present and did see the said Joseph Styles duly sign, seal, and as his act and deed deliver a certain indenture bearing date the day and year aforesaid, made between the said Joseph Styles of*

the one part, and one George Lowe, of ———, and the several creditors executing the said indenture, of the other part: whereby the said Joseph Styles" [*here set out shortly the substance of the deed*]. "And this examinant saith, that the name of the said Joseph Styles subscribed against the seal of the said indenture (now produced to him this examinant at the time of this his examination, and exhibited to the major part of the commissioners in and by the said commission named and authorized) is the proper handwriting of the said Joseph Styles, and that the name of this examinant subscribed to the said indenture, as a witness to the execution thereof, is of the proper handwriting of this examinant.

*Compounding with Petitioning Creditor.*] That on the first day of September last, a docket was struck in the office of the Lord Chancellor's secretary of bankrupts against Joseph Styles, the person against whom the commission now in prosecution is awarded and issued, by John Nokes, of &c. ; and that the said Joseph Styles, after such docket so struck as aforesaid, viz. on the third day of September aforesaid, did pay to the said John Nokes the sum of £200, [or gave or delivered goods or other satisfaction or security to the said John Nokes] for his debt to the said John Nokes.

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*Memorandum of the Adjudication.*

At the Baptist's Head Coffee House,  
London, the 2d day of August, 1825.

Memorandum,—We, whose names are hereunder written, being the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued and now in prosecution against Joseph Styles, of ——— street, in the city of London, builder, dealer and chapman, bearing date at Westminster, the ——— day of ———, one thousand eight hundred and twenty-five, having dealt in the said commission ; upon good proof upon oath before us this day had and taken, do find that the said Joseph Styles became bankrupt within the true intent and meaning of the statute made and now in force concerning bankrupts, before the date and suing forth of the said commission ; and we do therefore declare and adjudge the said Joseph Styles bankrupt accordingly.

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*Having prepared these several forms, attend with them at the time and place appointed for the first private meeting ; take with*

you also blank forms of the bankrupt's summons, of summonses for witnesses (if necessary), of an appointment of a provisional assignee and memorandum thereof, (if necessary), and a memorandum of the bankrupt's surrender, if it be expected that he will surrender at the first meeting. Let the petitioning creditor (Ord. Lough. 26th Nov. 1798) and the witnesses to prove the trading and act of bankruptcy (not being creditors, Ex. p. Osborne, 2 V. & B. 177, 1 Rose, 387, Adams v. Malkin, 2 Rose, 27. 3 Camp. 534, and see Ex. p. Chamberlain, 19 Ves. 481.) also attend at the same time.

As soon as three commissioners have met, the solicitor produces the commission, which is then opened. The commissioners then administer to each other the oath prescribed by the statute; see the form i. p. 8. and subscribe the memorandum to that effect, ante p. 7. And here it may be necessary to mention, that all memorandums, orders, warrants, and the like, are subscribed by the commissioners; all examinations and depositions, subscribed by the examinant or deponent, and signed in the margin by the commissioners.

After the commissioners have thus qualified, they should first ascertain that the party against whom the present commission is sued out, is not already an uncertificated bankrupt; Ord. Apsley, 12th Feb. 1774; for if so, the present commission would be void. See Ch. 1.

The commissioners next proceed to examine into the petitioning creditor's debt. By Ord. Apsley, 12th Feb. 1774, commissioners are desired and recommended to be careful in examining into the reality of the debt of the petitioning creditor. See Ch. 1. s. 3. The petitioning creditor appearing, he is sworn thus:

"You shall true answer make to all such questions as shall be put to you, by virtue of this commission awarded against (Joseph Styles): so help you God."

which is the oath tendered, in all cases, by the commissioners, to witnessess, &c.

The petitioning creditor is then examined, and, after reading over the deposition prepared for him, (ante p. 8.) subscribes his name to it; he is then asked, by one of the commissioners, if that be his name and handwriting, and if the contents of his deposition be true; which being answered in the affirmative, the commissioners sign their names in the margin.

In the same manner the witnesses to the trading and act of bankruptcy are sworn and examined, and subscribe their depositions (ante, p. 8—14), which are signed by the commissioners in the margin.

If upon this examination of witnesses, the commissioners be satisfied that there is a good petitioning creditor's debt, and a sufficient trading and act of bankruptcy, they, subscribe the memorandum of



adjudication (ante, p. 14.) But if they be not satisfied with the proof, either of the trading or act of bankruptcy, another private meeting is appointed for the purpose of proving it; and if it can be proved only by a witness who will not attend voluntarily, fill up a blank summons in form following, get it signed by the commissioners, and let the messenger serve an examined copy of it upon him personally. 2. Cook, 150. See i. p. . In practice this is frequently done before the private meeting, and of course before the commissioners have qualified, although not strictly warranted by the statute. See i. p.

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*Summons for Witness.*

By virtue of the King's Majesty's commission under the great seal of Great Britain, grounded upon the statute made concerning bankrupts, awarded against Joseph Styles of—— street, in the city of London, builder, dealer and chapman, directed to us, the major part of the commissioners therein named, who have hereunto set our names, and to others: These are to will and require you and every of you, to whom this our warrant is directed, personally to be and appear before the major part of the said commissioners, on —— next, the —— day of —— instant, at the Baptist's Head Coffee-House, Aldermanbury, London, at the hour of —— o'clock in the afternoon, then and there to be examined by us, the major part of the commissioners, by virtue of the said commission and the statute therein mentioned. And hereof you are not to fail at your peril. Given under our hands, this —— day of —— 1825.

To James Johnson.

(Adding his addition.)

*This summons should be personally served.*

\*.\* As to proceeding against a witness by warrant, if he do not obey the summons, see post, p. , and see i. p. .

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If there be any apprehension of an extent against the bankrupt's property, or if it be desirable that his business should be carried on for the benefit of the creditors, the commissioners may, at this meeting appoint a provisional assignee, (usually the messenger to the commission,) and convey to him the property, &c, of the bankrupt by assignment and bargain and sale. These should previously be prepared by the solicitor, ready for execution by the commissioners. The following are the forms:

*Provisional Assignment.*

This indenture, made the — day of — in the sixth year of the reign of our Sovereign Lord George the Fourth, by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord one thousand eight hundred and twenty-five, between A. B., C. D., and E. F., esquires, the major part of the commissioners named and authorised in and by a commission of bankrupt, awarded and issued against Joseph Styles, late of — street, in the city of London, builder, dealer and chapman, of the one part, and William Burwood, of Southampton Buildings, Chancery Lane, in the county of Middlesex, gentleman of the other part. Whereas his Majesty's commission under the great seal of Great Britain, grounded upon the statute made and now in force concerning bankrupts, bearing date at Westminster, the — day of —, one thousand eight hundred and twenty —, hath been awarded and issued against the said Joseph Styles, and directed to A. B., C. D., E. F., and G. H., esquires, and I. K., gentleman, thereby giving full power and authority to the said commissioners, four or three of them, to execute the same commission, as by the same commission, relation being thereunto had, more fully and at large appears: and whereas upon the execution of the said commission, it appeared to the major part of the commissioners, in the said commission authorised, upon due examination of witnesses, and other sufficient proof upon oath before them had and taken, that the said Joseph Styles, did, for the space of two years and upwards, carry on the business of a builder, [*here describe the trading, see ante p. 9.*] and did thereby seek and endeavour to get his livelihood as others of the same trade and business usually do, and in the course of his said trade and dealing, he became indebted unto John Nokes of — street, in the city of London, merchant, in the sum of one hundred pounds and upwards; and whereas the said Joseph Styles did, in the judgment of the major part of the said commissioners, become bankrupt to all intents and purposes, within the compass, true intent and meaning of the said statute made and now in force concerning bankrupts, before the date and suing forth of the said commission, and they did adjudge and declare him bankrupt accordingly;\* and whereas the said commissioners, parties to these presents, in further execution of the said commission and of the statute therein mentioned, have also found out and discovered, or it otherwise appeared to them, that the said Joseph Styles was, at the time he so became bankrupt as aforesaid, or afterwards, possessed of, interested in, or well intitled unto sundry goods,

wares, chattels, merchandizes, stock in trade, household stuff, implements of trade, bedding, plate, linen and other things, and that there were also divers debts, sum and sums of money due and owing unto him the said Joseph Styles and his estate, from several persons ; and whereas the said commissioners, parties hereto, think it necessary for the better preserving and securing the estate of the said Joseph Styles, to appoint an assignee provisionally of his estate and effects, until choice shall be made, by the major part in value of the creditors, of an assignee or assignees of the estate and effects of the said bankrupt, pursuant to notice to be given in the London Gazette for that purpose : Now this indenture witnesseth that the said commissioners, parties to these presents, for the purposes aforesaid, and in further execution of the said commission and of the statute therein mentioned, and by force and virtue thereof, and for and in consideration of the sum of five shillings of lawful money of Great Britain, to them, the said commissioners, parties to these presents, in hand paid by the said Wm. Burwood, at or before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, and also in consideration of the covenants hereinafter contained on the part and behalf of the said Wm. Burwood, his heirs, executors, and administrators, to be kept, done, and performed, do hereby appoint the said Wm. Burwood, assignee of the estate and effects of the said Joseph Styles ; and have also ordered, bargained, sold, disposed, assigned, and set over, and by these presents do (as much as in them the said commissioners, parties to these presents, lieth and they lawfully may) order, bargain, sell, dispose, assign, and set over unto the said Wm. Burwood, his executors, administrators and assigns, all and singular the goods, wares, and merchandizes, chattels, stock in trade, debts, sum and sums of money, household stuff, and all implements of trade, and other personal estate whatever of the said Joseph Styles, of which he was possessed or entitled unto, or of which any other person or persons was or were possessed in trust for him, at the time he became bankrupt, or at any time since : to have and to hold, ask, demand, sue for, recover, levy, and receive all and singular the premises hereby assigned, or mentioned or intended so to be, unto the said Wm. Burwood, his executors, administrators, and assigns, in trust, for the immediate preservation thereof, and to and for the use, benefit and advantage of all the creditors of the said Joseph Styles, who have already sought, or shall hereafter in due time come in and seek, relief under the said commission, according to the said statute, and to and for no other use, trust, intent, or purpose whatsoever. And the said Wm. Burwood doth hereby for himself, his heirs executors, and administrators, and for every of

them, covenant, promise and agree to and with the said commissioners, parties to these presents, their executors and administrators, and to and with every of them, in manner and form following, (that is to say), that he, the said Wm. Burwood, his heirs, executors, or administrators, some or one of them, shall and will, as soon as an assignee or assignees of the said bankrupt's estate and effects shall be duly chosen and appointed pursuant to notice in the London Gazette, and when he shall be thereunto required for that purpose, join with the major part of the commissioners named in the said commission, in the making an assignment of all and singular, the said goods, chattels, debts, sum and sums of money, wares, and merchandizes, and all other the premises hereinbefore mentioned, or intended to be hereby assigned, unto such person or persons as shall be duly chosen and appointed to be the assignee or assignees of the said bankrupt's estate, and that he, the said Wm. Burwood, shall and will also deliver up all the estate and effects of the said bankrupt as shall or may have come to the hands or possession of him, the said Wm. Burwood, or to the hands or possession of any other persons in trust for him or for his use, unto such person or persons as shall be duly chosen assignee or assignees of the said bankrupt's estate and effects, or otherwise as the said commissioners shall direct or appoint; and further, that he the said Wm. Burwood, his heirs, executors and administrators shall and will, from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless and indemnified, all the said commissioners in and by the said commission named and authorised, their heirs, executors, administrators, and every of them, their and every of their bodies, lands, tenements, goods, chattels, and estate whatsoever, of, from and against all and all manner of action and actions, suits, arrests, complaints, costs, damages, and expenses whatsoever, which they or any of them shall or may sustain or be put unto, for or by reason or means of this present deed of assignment, or any act or acts to be done or executed by him, the said Wm. Burwood, in pursuance or by virtue of the said commission or deed of assignment respectively. In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written.

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*Provisional Bargain and Sale.*

*Same as the last form to the asterisk\*, and then thus:] And whereas the said commissioners, parties to these presents, in further execution of the said commission, do find that the said*

Joseph Styles, at the time he became a bankrupt, and before the date and suing forth of the said commission, was seised to him and his heirs or was otherwise interested in and entitled to certain freehold estates in the county of ——— or elsewhere. And whereas the said commissioners, parties hereto, think it necessary, for the better preserving and securing the estates and effects of the said Joseph Styles, to appoint an assignee, provisionally, of his estate and effects until choice shall be made of an assignee or assignees of the estate and effects of the said bankrupt, pursuant to notice to be given in the London Gazette for that purpose: Now this indenture witnesseth, that the said commissioners, parties to these presents, for the purpose aforesaid, and in further execution of the said commission, and of the statute therein mentioned, and by virtue thereof, and for and in consideration of the sum of five shillings of lawful money of Great Britain, to them the said commissioners, parties to these presents, in hand paid by the said Wm. Burwood, at or before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, and also in consideration of the covenants hereafter contained on the part and behalf of the said Wm. Burwood, his heirs, executors and administrators, to be kept, done and performed, do hereby appoint the said Wm. Burwood provisional assignee of the estate and effects of the said Joseph Styles, and have also, granted, bargained, sold, assigned and set over, and by these presents do (as much as in them lieth, and they lawfully may) grant, bargain, sell, assign, and set over unto the said William Burwood, his heirs and assigns, all the freehold messuages, lands, tenements and hereditaments, situate, lying and being in the said county of ———, or elsewhere, whereof, wherein, or whereunto he the said Joseph Styles, at the time he became bankrupt or at any time since, had any estate, right, title, or interest, in possession, reversion, remainder or expectancy, or otherwise howsoever, with their and every of their appurtenances, and all the estate, right, title, interest, use, trust, property, benefit, power, equity of redemption, claim, and demand whatsoever, both in law and equity, of him the said Joseph Styles, or of them the said commissioners, by virtue of the said commission, of in and to the same premises, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every or any part or parcel thereof, together with all deeds, evidences, and writings, touching and concerning the same, or any part or parcel thereof; to have and to hold the said freehold messuages, lands, tenements and hereditaments, and all and singular the premises intended to be hereby granted, bargained, sold and assigned, with their and every of their appurtenances, unto the said Joseph Styles, his heirs

and assigns for ever, to the use of him the said William Burwood, his heirs and assigns for ever, (subject to such mortgage or mortgages, or other charges and incumbrances, if any such there be, as the same premises are subject to,) in trust nevertheless, for the preservation of the estates and interest before mentioned, and for the several uses of all such the creditors of the said Joseph Styles, who shall hereafter in due time come in and seek relief by virtue of the said commission, and to and for no other use, trust, intent, or purpose whatsoever. And the said William Burwood doth hereby, for himself, his heirs, executors, and administrators, and for every of them, covenant, promise, and agree to and with the said commissioners, parties to these presents, their executors and administrators, and to and with every of them, in manner and form following, that is to say, that he the said William Burwood, his heirs, executors and administrators, some or one of them, shall and will, as soon as an assignee or assignees of the said bankrupt's estate and effects shall be duly chosen and appointed, pursuant to notice in the London Gazette, and when he or they shall be thereunto required for that purpose, join with the major part of the commissioners named in the said commission, in granting, bargaining, selling and assigning all the said bankrupt's messuages, lands, tenements and hereditaments, and all the said bankrupt's estate, right, title and interest, and other the premises hereinbefore mentioned, and hereby granted, bargained and sold, or intended so to be, with their and every of their appurtenances, unto such person or persons as shall be duly chosen and appointed to be the assignee or assignees of the said bankrupt's estate and effects. And further, that he the said William Burwood, his heirs, executors, and administrators, shall and will, from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless and indemnified, all the said commissioners in and by the said commission named and authorised, their heirs, executors and administrators, and every of them, their and every of their bodies, lands, tenements, goods, chattels and estate whatsoever, of from and against all and all manner of action and actions, suits, arrests, complaints, costs, damages and expenses whatsoever, which they or any of them shall or may be put unto, for or by reason or means of this present deed of bargain and sale, or any act or acts to be done or executed by him the said William Burwood in pursuance or by virtue of the said commission or deed of bargain and sale respectively. In witness whereof the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

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*The commissioners then sign a memorandum of their having executed such provisional assignment, &c. in this form :*

*Memorandum of Execution of the Provisional Assignment, &c*

*At the Baptist's Head Coffee House,  
London, the 2d day of August, 1825.*

*Memorandum, that we A. B., C. D., and E. F., esquires, the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued and now in prosecution against Joseph Styles of — street, in the city of London, builder, dealer and chapman, bearing date at Westminster the — day of — one thousand eight hundred and twenty-five, met at the time and place above mentioned, and duly executed a provisional assignment of the said bankrupt's estate and effects, [and also executed a provisional bargain and sale of the said bankrupt's real property] to Wm. Burwood, of Southampton Buildings, Chancery Lane, in the County of Middlesex, gentleman.*

*When all this has been done, the messenger, or the solicitor in country commissions, fills up the following warrant of seizure, and gets it signed by the commissioners.*

*Warrant of Seizure.*

*Whereas the King's Majesty's commission under the great seal of Great Britain, grounded upon the statute made and now in force concerning bankrupts, bearing date at Westminster, the — day of — one thousand eight hundred and — hath been awarded and issued forth against Joseph Styles of — street, in the city of London, builder, dealer and chapman, directed unto us, who have hereunto set our hands and seals, together with — — and — — — esquires; and we, the major part of the commissioners named and authorized by virtue of the said commission, having begun to put the said commission in execution, upon due examination of witnesses, and other good proof, upon oath before us taken, have found that he, the said Joseph Styles, did for several years last past, use and exercise the trade of a builder, dealer and chapman, and have also found that he the said Joseph Styles, by reason of such his trading, became indebted unto John Nokes of — street, in the said city of London, merchant, in the sum of one hundred pounds and upwards; and that being so indebted as aforesaid, he, the said Joseph Styles, became bankrupt to all intents and purposes within the true intent and meaning of the statute made and now in force concern-*

ing bankrupts, before the date and issuing forth of the said commission. These are, therefore, by virtue of the said commission, and the statute therein mentioned, to will and require, authorize and empower you and every of you, to whom this our warrant is directed, forthwith to enter into and upon the house and houses of *him*, the said *Joseph Styles*, and also into all other place and places belonging to *him*, the said *Joseph Styles*, where any of his goods are, or are suspected to be ; and there to seize all the ready money, jewels, plate, household stuff, goods, merchandize, books of accompt, and all other things whatsoever belonging to *him*, the said *Joseph Styles* ; and such things as you shall so seize, you shall cause to be inventoried and appraised by honest men of skill and judgment, and the same you shall return to us with all convenient speed. And what you shall so seize, you shall safely detain and keep in your possession, until we shall give you orders for the disposal thereof ; and in case of resistance, or of not having the key or keys of any door or lock belonging to any place or places of *him*, the said *Joseph Styles*, where any of his goods are, or are suspected to be, you shall break open, or cause to be broken open the same, for the better execution of this our warrant.

Given under our hands and seals, this — day of —, in the year of our Lord one thousand eight hundred and *twenty-five*.

To *William Burwood*,

Our messenger, and to his assistant, and to all mayors, bailiffs, constables, head-boroughs, and all others his Majesty's loving subjects ; whom we require to be aiding and assisting in the execution of this our warrant, as occasion shall require.

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*And lastly, the messenger, or the solicitor in country commissions, fills up the bankrupt's summons, and the advertisement for the Gazette, thus :*

*The Bankrupt's Summons.*

To *Joseph Styles*,

Whereas a commission of bankrupt, on the — day of — now last past, issued under the great seal of Great Britain, against you *Joseph Styles*, by the name and description of *Joseph Styles*, of — street, in the city of London, builder, dealer and chapman ; and whereas the major part of the commissioners, in



and by the said commission named and authorized, have declared you to be a bankrupt: we, the said commissioners, do hereby summon and require you the said Joseph Styles personally to be and appear before us the commissioners, or the major part of the commissioners in the said commission named and authorized, on the 16th and 23d days of August instant, and 13th day of September next, at eleven of the clock in the forenoon, at [the court of commissioners of bankrupt, in Basinghall-street, in the city of London] then and there to be examined, and to make a full and true discovery and disclosure of all your estates and effects, according to the directions of the statute made and now in force concerning bankrupts, passed in the sixth year of the reign of his present Majesty King George the Fourth, intituled "An act to amend the laws relating to bankrupts:" and herein fail not at your peril. Given under our hands, this — day of —, 1825.

*\* \* To be signed by the commissioners, and left by the messenger for the bankrupt at his usual place of abode. When the bankrupt afterwards surrenders, the following memorandum thereof, printed upon the back of this summons, is then filled up, and signed by the commissioners.*

At the Court of Commissioners of Bankrupt,  
16th day of August, 1825.

Be it remembered, that the within named *Joseph Styles*, on the day and year and at the place above-mentioned, came and surrendered *himself* to us, the major part of the commissioners named and authorized in and by a commission of bankrupt awarded, issued, and now in prosecution against *him*, the said *Joseph Styles*, and submitted to be examined from time to time before us, touching a discovery and disclosure of *his* estate and effects, and in all things to conform himself according to the direction of the Act of Parliament made and now in force concerning bankrupts; but not now being prepared to make a full discovery and disclosure of *his* estate and effects, prayed further time for that purpose, which we have granted *him* accordingly.

*\* \* Or if he surrenders at the private meeting, (which he may do,) the above summons and indorsement may be given to him, such indorsement being of course dated at the place and time it is given, vide post; and a memorandum of the surrender must be signed by the commissioners, (see the form, post, p. 27.) and filed with the proceedings.*

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***The Advertisement for the Gazette.***

Whereas a commission of bankrupt is awarded and issued forth against Joseph Styles, of — street, in the city of London, builder, dealer and chapman ; and he, being declared a bankrupt, is hereby required to surrender himself to the commissioners in the said commission named, or the major part of them, on the 16th and 23d days of August instant, and on the 13th day of September next, at eleven o'clock in the forenoon of each day, at [the court of commissioners of bankrupt, Basinghall Street, in the City of London,] and make a full discovery and disclosure of his estate and effects ; when and where the creditors are to come prepared to prove their debts, and at the second sitting to choose assignees, and at the last sitting the said bankrupt is required to finish his examination, and the creditors are to assent to or dissent from the allowance of his certificate. All persons indebted to the said bankrupt, or that have any of his effects, are not to pay or deliver the same, but to whom the commissioners shall appoint, but give notice to T. L. [the solicitor] No. 3, — street, London.

\* \* In London commissions, the messenger gets this advertisement inserted ; but in country commissions, the solicitor sends the copy to his agent in town, who must thereupon get a certificate of the commission having issued from the clerk of commissions of bankrupt at the bankrupt office, before the printer of the Gazette will insert it. A copy of the Gazette should be obtained and kept among the proceedings under the commission.

Lastly, having had all the proceedings signed by the commissioners, tack them together in their order, with a cover of parchment or strong paper to preserve them ; and in London commissions make a short note for the registrar, of the particulars required to be registered at his office, (see i. p. 2, 3,) and pay him 11s.

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**FIRST PUBLIC MEETING.**

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In preparing for this first public meeting, the solicitor should furnish himself with blank forms——1, of the memorandum of an additional commissioner qualifying, if necessary ;—2, of the memorandum of the bankrupt's not appearing to surrender ;—3, of the

*minute of the bankrupt's surrender ;—4, of the memorandum that no creditors appeared to prove upon the estate ;—and 5, the different forms of proof.*

*First, if any of the commissioners attend who have not already qualified at the private meeting, the oath must be administered to him, (See i. p. 8.) and the commissioner then subscribes the following*

*Memorandum of a single Commissioner having qualified.*

At the Court of Commissioners of Bankrupts, Basinghall Street, in the City of London, the 16th day of May, 1827.

Memorandum,—That I, J. K. gentleman, a commissioner named and authorized in and by a commission of bankrupt awarded and issued and now in prosecution against *Joseph Styles, of — street, in the city of London, builder, dealer and chapman*, bearing date at *Westminster*, the — day of —, one thousand eight hundred and twenty-five, did, on the day and year, and at the place above written, duly take the oath prescribed by an act of parliament made in the sixth year of the reign of his present Majesty King George the Fourth, intituled “ An Act to amend the laws relating to bankrupts,” for commissioners to take before they proceed in any commission of bankrupt, before I acted in the execution of the said commission. Witness, [*the solicitor or his clerk.*]

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*If the bankrupt (not having surrendered at the private meeting, and which is certainly not very usual) do not surrender at this meeting, get the commissioners to subscribe the following*

*Memorandum that the Bankrupt has not surrendered.*

At the Court of Commissioners of Bankrupts, Basinghall Street, in the City of London, the 16th day of May, 1827.

Memorandum, that we, whose names are hereunto subscribed, being the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued and now in prosecution against *Joseph Styles, of — street, in the city of London, builder, dealer and chapman*, met on the day and year, and at the place above-mentioned, pursuant to notice in the London Gazette for that purpose,\* but the said *Joseph Styles* did not surrender himself to us, or make any disclosure or discovery of his estate or effects, pursuant to such notice, or send any excuse why he did not.

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*But if the bankrupt do surrender at this meeting, then fill up the following memorandum, and get it subscribed by the bankrupt, and signed in the margin by the commissioners; then fill up the indorsement on his summons, as directed ante, page 22; get it subscribed by the commissioners, and give it to him.*

*Memorandum of Surrender.*

At the Court of Commissioners of Bankrupts, Basinghall Street, in the City of London, the 16th day of May, 1827.

Memorandum, that *Joseph Styles*, of ——— street, in the city of London, builder, dealer and chapman, the person against whom the commission of bankrupt now in prosecution is awarded and issued, did, on the day and year, and at the place above-mentioned, pursuant to notice in the London Gazette for that purpose, surrender himself to the major part of the commissioners in and by the said commission named and authorised, and submitted himself to be from time to time examined touching the discovery of his estate and effects, and in all things to conform himself according to the directions of the act of parliament made and now in force concerning bankrupts, namely, the act of parliament made in the sixth year of the reign of his present Majesty King George the Fourth, intituled “ An Act to amend the laws relating to bankrupts,” in order to have the benefit thereof. And the said *Joseph Styles*, being sworn and examined on the day and year, and at the place above-mentioned, upon his oath saith, that he is not at present prepared to make a full disclosure and discovery of his estate and effects, but prays further time for the doing thereof until the next day appointed in the London Gazette for that purpose, which is hereby granted accordingly.

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*Also, if no creditors appear at this meeting to prove their debts, get the commissioners to subscribe the following*

*Memorandum that no Creditors appeared to prove Debts.*

*Same as the last form but one to the asterisk\*, and then thus: “ but no creditor appeared to prove or claim any debt, under the said commission.” Or if the bankrupt also have not surrendered, it may be added to the memorandum in that case, (ante, p. 26,) thus: “ nor did any creditor appear to prove,” &c. as above.*

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*But if any creditor appear to prove his debt, then fill up a deposition according to the nature of the debt, and after he has subscribed his name to it, get him sworn to it, and get his deposition signed in the margin by the commissioners. There are usually three blank forms in each of the printed sheets of forms ; and you intitule each sheet of the place and day of meeting as in the form in the next page.*

*The creditor must, at the time he proves his debt, exhibit to the commissioners all the securities he holds for it ; and a memorandum to that effect is written on each security, as directed post, p. 45. See i. Ch. 1. § 7.*



*The like, upon a Bill or Note received from the Bankrupt for Money.*

*At [&c. as above.]*

Charles Jameson of [&c. as above.] being sworn and examined the day and year and at the place aforesaid, upon his oath saith, that *Joseph Styles*, the person against whom this commission of bankrupt is awarded and issued forth, was, at and before the date an  
 1 of the said commission, and still is, justly and truly indebted to this deponent in the sum of *thirty pounds* by *lent and advanced by this deponent to the said Joseph Styles*; for which said sum of thirty pounds or any part thereof, this deponent hath not, nor hath any person, by his order, or to this deponent's knowledge or belief for his use, received any security or satisfaction whatsoever, save and except the bill of exchange following :

Note or Bill.	Date.	Drawer.	Acceptor.	Sum.			Payable to	At what Date drawn.	Indorsers.
				£.	s.	d.			
Bill.	7 Feb. 1825.	Edward Fegan.	John Irwin.	30	0	0	Joseph Styles.	6 Months.	Joseph Styles.

*The like, upon a Bill or Note received from the Bankrupt for Goods sold and delivered, &c.*

*At [&c. as above.]*

George Brooke, of [&c.] being sworn and examined the day and year and at the place aforesaid, upon his oath saith, that *Joseph Styles*, the person against whom this commission of bankrupt is awarded and issued forth, was, at and before the date and issuing forth of the sa to James Ward his partner, in the sum of, which said y their orde save and unto the sa his said p curity or a note :

Note or Bill.	Date.	Drawer.	Acceptor.	Sum.		Payable to	At what Date drawn.	Indorsers.
Bill.	27 Dec. 1824.	James Dunn.	George Cooper.	£ 10	s. 0	d. 0	6 Months.	John Kent. Joseph Styles.
Note.	22 Jun. 1825.	John Kent.		15	0	0	3 Months.	Joseph Styles.



*Deposition for Goods sold, &c.*

At [*&c. as ante, p. 29.*]

*Andrew Dundas, of [*&c. as ante, p. 29,*] being sworn and examined the day and year and at the place aforesaid, upon his oath saith, that Joseph Styles, the person against whom this commission of bankrupt is awarded and issued forth, was, at and before the date and issuing forth of the said commission, and still is, justly and truly indebted unto this deponent in the sum of fifty pounds [*\*for goods sold and delivered by this deponent to the said Joseph Styles*]; for which said sum of fifty pounds or any part thereof, he this deponent hath not, nor hath any person by his order, or to his knowledge or belief for his use, received any security or satisfaction whatsoever. [Adding, in all cases where the deponent holds any security for the debt, these words: " save and except a certain," &c. describing the security; and if it be the security of the bankrupt alone, adding also, after the description of the security—" which said — this deponent doth hereby surrender and give up." See i. Ch. 1. § 7.*

*Quaker's Affirmation to the like effect.*

At [*&c. as ante, p. 29.*]

Jonathan Dempsey, of — street, in the city of London, grocer, (being one of the people called Quakers,) doth solemnly affirm, that Joseph Styles, the person against whom," [*&c. as in the last form, to the end, merely substituting " affirmant" for " deponent."*]

*The statement of the nature of the debt may be varied as occasion may require, by inserting some one of the following forms, instead of the words after the asterisk and between the brackets in the last form.*

*For property sold.] For goods sold and delivered by this deponent to the said J. S.*

*For a gelding sold and delivered by this deponent to the said J. S.*

*For so much money which the said J. S. promised to pay unto this deponent, together with a certain mare the property of him the said J. S., in exchange for a certain gelding the property of*

this deponent, and which said last-mentioned gelding was accordingly heretofore delivered to the said J. S.

For fixtures of and in a certain dwelling house, sold and delivered by this deponent to the said J. S.

For medicines and other things administered, applied and delivered, found and provided by this deponent, to and for the said J. S. [and his family.]

For a certain messuage, lands and premises, with the appurtenances, bargained, sold and released by this deponent to the said J. S.

For a certain messuage, lands and premises, with the appurtenances, bargained, sold and surrendered by this deponent to the said J. S.

For the remainder of a certain term of years of and in a certain messuage, lands and premises, with the appurtenances, bargained, sold and assigned by this deponent to the said J. S.

For goods sold by this deponent to the said J. S., and at his request delivered to one W. S.

*For property hired.]* For the use and hire of a certain horse and chaise, let to hire and delivered by this deponent to the said J. S.

For the use and hire of certain household furniture, let to hire and delivered by this deponent to the said J. S.

*For rent.]* For one year's rent of a certain messuage, lands, and premises, by this deponent demised to the said J. S.: and which said year's rent is now in arrear and unpaid.

For the use and occupation of a certain messuage, lands and premises of this deponent, held and enjoyed by the said J. S., as tenant thereof to this deponent, for one year now elapsed.

For the use and occupation of certain rooms and apartments in a certain dwelling house of this deponent, held and enjoyed by the said J. S. as tenant thereof to this deponent, for one year now elapsed.

For warehouse room in a certain warehouse of this deponent, and by this deponent found and provided, for in and about the stowing and keeping of certain goods and merchandise for the said J. S.

For double rent of a certain messuage, lands and premises of this deponent, (held and enjoyed by the said J. S. as tenant thereof to this deponent, at and under the yearly rent of — pounds, payable quarterly,) for one quarter of a year, ending at Midsummer-day last past; and which said quarter's rent accrued due after the expiration of a certain notice duly given

to this deponent by the said J. S., that he the said J. S. would quit the said premises on Lady-day last past.

*For board and lodging.]* For meat, drink, washing, lodging, and other necessities, by this deponent found and provided for the said J. S.

*For schooling.]* For the board, maintenance, and education of one W. S., the infant son of the said J. S., and for clothes and other necessities found and provided for, and money advanced to the said W. S., at request of the said J. S.

For the work and labour, care, diligence, and attendance, done, performed and bestowed by this deponent, as a school-master, in and about the teaching and instructing of one W. S. the infant son of the said J. S.

*For horse-keep.]* For horse-meat, stabling, care and attendance, provided and bestowed for and upon the feeding and keeping of a certain gelding, for the said J. S.

For the agisting, depasturing, and keeping of certain cattle by this deponent, for the said J. S.

*For work and labour.]* For work and labour, done and performed by this deponent for the said J. S.

For work and labour done and performed by this deponent and his servants, and with the deponent's horses, carts, and waggons, for the said J. S.

For work, labour, and materials, by this deponent done, performed and provided for the said J. S.

For work, labour, care, diligence, and attendance, done, performed and bestowed by this deponent, as an attorney and solicitor, in and about the [prosecuting, defending, and soliciting of certain causes, suits, and businesses] for the said J. S., on his retainer, and for certain fees due and payable to this deponent in respect thereof.

For work and labour, care, diligence, and attendance, done, performed, and bestowed by this deponent, in and about the drawing, copying, and engrossing of certain deeds and writings for the said J. S., and in and about other business for the said J. S.

For work and labour, care, diligence, and attendance, done, performed and bestowed by this deponent, as a surgeon and apothecary, in and about the healing and curing of the said J. S. [and his family] of divers diseases and maladies, at the request of the said J. S., and also for medicines and other things ad-

ministered, applied and delivered, found and provided by this deponent, to and for the said J. S. [and his family] at his like request.

For the work and labour, care and diligence, done, performed and bestowed by this deponent, as the factor and agent of the said J. S., in and about the selling and disposing of certain goods of the said J. S., and in and about other business of the said J. S.

*For wages.]* For wages due and payable from the said J. S. to this deponent, for the service of this deponent, done and performed for the said J. S., as the hired servant of the said J. S.

For salary due and payable from the said J. S. to this deponent, for the service of this deponent, done and performed for the said J. S., as clerk to the said J. S.

For wages due and payable from the said J. S. to this deponent, for the service of this deponent, by him done and performed as a mariner on board of a certain ship of the said J. S., called the —, for the said J. S. [*Or, if the commission be against the captain, then* “on board of a certain ship called the —, whereof the said J. S., during the time of the said service, was master and commander.”]

For the wages of this deponent, and for his service done and performed by him as master and commander of a certain ship called The —, for the said J. S.

*For carriage.]* For the carriage and conveyance of certain goods carried and conveyed by this deponent in certain waggon and other carriages, for the said J. S.

For freight [primage and average] due and payable from the said J. S. to this deponent, for and in respect of the carriage and conveyance of certain goods and merchandise carried and conveyed by this deponent, in and on board of a certain ship, whereof this deponent was master, from — to —, for the said J. S.

For the lighterage of certain goods, carried and conveyed by this deponent in certain lighters and other vessels, and by him shipped and landed out of the same, for the said J. S.

For the carriage and conveyance of certain goods and merchandise, carried and conveyed by this deponent in certain boats and other vessels, in and upon a certain canal, from — to —, for the said J. S.

For the passage of the said J. S., in and on board of a certain ship, whereof this deponent was master, from — to —.

*For premiums of insurance.]* For certain premiums of insurance due and payable from the said J. S. to this deponent, for and in respect of this deponent's having underwritten certain policies of insurance, for the insurance of certain sums of money on certain ships and vessels, goods, wares, and merchandise, for the said J. S.

*For money.]* For money lent and advanced by this deponent to the said J. S.

For money paid, laid out and expended by this deponent to and for the use of the said J. S.

For money had and received by the said J. S., to and for the use of this deponent.

For money by this deponent lent and advanced to, and paid, laid out and expended for, the said J. S.; and also for money had and received by the said J. S., to and for the use of this deponent.

*On a policy of insurance.]* Upon and by virtue of a certain policy of insurance on a certain ship of this deponent, on a voyage from — to —, and which said policy was underwritten by the said J. S., for the said sum of — pounds. And this deponent further saith, that the said ship on her voyage aforesaid, was captured and taken as prize by certain enemies of our lord the King, which was one of the perils insured against in and by the said policy; and that a loss of one hundred per cent. on the said policy has since been adjusted and signed by the said J. S.

*On a bond by the obligee.]* For principal and interest due on a bond, bearing date the — day of — in the year of our Lord —, and made and entered into by the said J. S. to this deponent, in the penal sum of — pounds, conditioned for the payment of — pounds, (being the amount of goods sold and delivered before that time by this deponent to the said J. S.,” or otherwise describing the consideration of the bond,) with lawful interest for the same, at a day now past.

Upon and by virtue of a bond, bearing date the — day of — in the year of our Lord —, and made and entered into by the said J. S., to this deponent, in the penal sum of — pounds, conditioned for the performance of an award to be made, as in the condition of the said bond is mentioned; and by which said award, since made in pursuance of the said condition, bearing date the — day of — in the year aforesaid, the said J. S., was awarded to pay to this deponent the said sum of — pounds upon a day now past.

*On a bond by the assignee.]* A. B. of —, gentleman, and J. N. of —, grocer, being sworn and examined the day and year and at the place aforesaid, severally make oath and say, and first, this deponent A. B. for himself saith, that Joseph Styles, the person against whom this commission of bankrupt is awarded and issued forth, did, before the awarding and issuing of the said commission, duly make and enter into a certain bond to this deponent, bearing date the — day of — in the year of our Lord —, in the penal sum of — pounds, conditioned for the payment of — pounds, (being the amount of," &c. *stating the consideration, as in the form last but one*), with lawful interest for the same, at a day now past; and which said sum of — pounds with interest thereon, still remains wholly due and unpaid. And this deponent further saith, that since the making of the said bond, the same, with all monies due thereon, hath been by him duly assigned unto the other deponent J. N. And this deponent J. N. for himself saith, that the said J. S. is justly and truly indebted unto this deponent, as assignee as aforesaid, in the sum of — pounds, for principal and for interest due on the said bond up to the — day of — last past.

*On a deed.]* Upon and by virtue of a certain indenture, bearing date the — day of — in the year of our Lord —, and made between the said J. S. of the one part, and this deponent of the other part, whereby the said J. S. covenanted to pay to this deponent the said sum of — pounds, at a day now past.

*On a judgment.]* Upon and by virtue of a judgment of the court of — as of — term last past, whereby this deponent recovered against the said J. S. the said sum of — pounds, for his damages, cost and charges, [*or whereby this deponent recovered against the said J. S. his debt amounting to — pounds, as also the sum of — pounds for his damages, cost and charges.*]

*On a decree.]* Decreed to this deponent by a decree of the High Court of Chancery, dated the — day of — now last past, and pronounced before the said J. S., became bankrupt in a cause depending in the said court, wherein he this deponent is complainant and the said J. S., the bankrupt, is defendant.

*For an annuity.]* For the arrears of a certain annuity heretofore granted unto this deponent by the said Joseph Styles and also in the further sum of seven hundred pounds, being the amount ascertained by the commissioners under the said com.

mission as the value of the said annuity; and which said sums amount in the whole to eight hundred pounds: for which said sum of eight hundred pounds, or any part thereof, she this deponent hath not, nor hath any person by her order, or to her knowledge or belief for her use, received any security or satisfaction whatsoever, save and except a certain indenture bearing date the" &c. "and made between" &c. "whereby" &c., *stating shortly the purport of the annuity deed or other securities, and if secured by the bankrupt only, adding "which said deed," &c.* "this deponent doth hereby surrender and give up."

*For money paid by a surety.]* Upon his oath saith, that on or about the — day of — last past, and before the date and issuing forth of the commission of bankrupt awarded and issued and now in prosecution against Joseph Styles, of — street, in the said city of London, builder, dealer and chapman, he this deponent [as surety for the said Joseph Styles, joined with the said Joseph Styles in a joint and several promissory note for the payment of the sum of five hundred pounds to one James Franks, payable at four months after the date thereof. And this deponent further saith that on the — day of — last past, after the issuing of the said commission, he paid unto the said James Franks the said sum of £500 in payment and discharge of the said promissory note," or (*if he have compounded the debt*) "the sum of £300 in discharge of the whole sum due and payable upon and by reason of the said promissory note, and which said sum of £300 the said James Franks then received in discharge of the whole sum aforesaid, and delivered up the said promissory note unto this deponent;" or *stating the nature of the suretyship, and its discharge, according to the fact, and so as to bring the case within the words and meaning of the statute. See i. Ch. 1. § 7.]* "And this deponent further saith that for the said sum of £300 so paid by him as aforesaid, as surety for the said Joseph Styles, or for any part thereof, he this deponent hath not nor hath any person by his order, or to his knowledge or belief for his use, received any security or satisfaction whatsoever.

\* \* \* *This deponent, at the time he proves his debt should exhibit to the commissioners the instrument by which he became surety.*

*Contingent debts.]* The affidavit in this case states the debt, and the contingency upon which it is payable, and states the contingency to have happened, and when; or states that the bankrupt is indebted unto the deponent in a certain sum, "being the amount ascertained by the commissioners under the said commission, as the value of the said debt," as the case may

be ; (see Ch. 1. § 7.) and concluding in the usual form, that the deponent has not received any security or satisfaction for the same, save and except, &c.

*Where the debt has been sold.*] James Brown, of — street, in the city of London, silk manufacturer, and John Anderson of — in the said city, merchant, being severally examined the day and year and at the place aforesaid: the said James Brown (being one of the people called Quakers) doth solemnly affirm that Joseph Styles, the person against whom," [*&c. as in ordinary cases, to the words*] "any security or satisfaction whatsoever, save and except from the said John Anderson. And this deponent, John Anderson being sworn, the day and year and at the place aforesaid, upon his oath saith, that before the date and issuing forth of the said commission, he this deponent, for a valuable consideration, did purchase of and from the said James Brown the said debt ; and that after the said purchase, and before the date and issuing forth of the said commission, this deponent received from the said Joseph Styles the sum of — pounds, in part payment of the said debt, leaving the sum of — pounds still due and owing unto this deponent ; and therefore this deponent saith that the said Joseph Styles was, at and before the date and issuing forth of the said commission, and still is justly and truly indebted unto this deponent in the sum of — pounds, being the rest and residue of the said debt so due to him as aforesaid ; for which said sum of — pounds, or any part thereof, he this deponent hath not, nor hath any person by his order, or to his knowledge or belief for his use, received any security or satisfaction whatsoever.

*Where there are mutual debts.*] This is the same as in ordinary cases, the creditor proving for the amount merely of the balance due to him "for goods sold and delivered," or the like.

*Where the creditor has already proved another debt.* Same as in ordinary cases, to the words "for goods sold and delivered by this deponent, unto the said Joseph Styles, which together, with the sum of five hundred pounds before proved by this deponent; make in all the sum of — pounds ; for which said sum of — pounds or any part thereof," *&c. as in ordinary cases to the end.*

*If there be two or more different species of debt, they may be joined in the same affidavit, thus :* "indebted unto this deponent in the sum of — pounds, for goods sold and delivered by this deponent to the said J. S. ; and also for meat, drink, washing



and lodging, and other necessities, by this deponent found and provided for the said J. S.; and also for work and labour done and performed by this deponent for the said J. S.; and also for money by this deponent lent and advanced to, and paid, laid out and expended for, the said J. S.; and also for money had and received by the said J. S, to and for the use of this deponent."

*Affidavits of Debt by particular Persons.*

*By a partner.]* J. N. of — [ &c. as in the form ante, p. 29, to the words] is justly and truly indebted to this deponent and to W. N, his partner, in the sum of — pounds, for goods sold and delivered by this deponent and his said partner to the said J. S.

*Or,* is justly and truly indebted to this deponent in the sum of — pounds, for goods sold and delivered by this deponent and one W. N., his partner, in his life-time, now deceased, and whom this deponent hath survived, to the said J. S.

*By the assignee of a bankrupt.]* J. N. of —, grocer, assignee of the estate and effects of A. B. a bankrupt, being sworn [ &c. as in the form ante, p. 29, to the words] is justly and truly indebted to this deponent, as assignee as aforesaid, in the sum of — pounds, for goods sold and delivered by the said A. B. before his bankruptcy, to the said J. S. as appears by the books of the said A. B. and as this deponent verily believes.

*By executor or administrator.]* J. N. of —, grocer, executor of the last will and testament of A. B. deceased, being sworn [ &c. as in the form, ante p. 29, to the words], is justly and truly indebted to this deponent, as executor as aforesaid, in the sum of — pounds, for goods sold and delivered by the said A. B. in his life-time to the said J. S. as appears by the books of the said A. B. and as this deponent verily believes.

J. N. of —, grocer, executor of the last will and testament of C. D. deceased, who in his life-time was executor of the last will and testament of A. B. deceased, being sworn [ &c. as in the form ante p. 29, to the words] is justly and truly indebted to this deponent, as executor as aforesaid, in the sum of — pounds, for goods sold and delivered by the said A. B. in his life-time to the said J. S. before he became bankrupt, as appears by the books of the said A. B. and as this deponent verily believes.

J. N. of —, grocer, administrator of all and singular the goods and chattels, rights and credits, which were of A. B. de-

ceased, at the time of his death, who died intestate, being sworn [*&c. as in the form last but one.*]

J. N. of —, grocer, administrator of all and singular the goods, chattels, rights and credits, which were of A. B. deceased, at the time of his death, left unadministered by C. D. in his life-time, now deceased (and which said C. D. in his life-time was executor of the last will and testament of the said A. B. deceased), with the will of the said A. B. annexed, being sworn [*&c. as in the form last but one.*]

\* \* The deponent at the time of tendering his proof must exhibit the probate or letters of administration to the commissioners.

*By a corporation or public company.] James Fraser, of — street, in the city of London, gentleman, agent for the* [here name the corporation, &c.] *“and duly authorized by them to make this proof for them and on their behalf, being sworn and examined on the day and year, and at the place aforesaid, upon his oath saith, that Joseph Styles, the person against whom this commission of bankrupt is awarded and issued forth, was at and before the date and issuing forth of the said commission, and still is justly and truly indebted unto the said* [*&c. as above*] *in the sum of* [*&c. here state the amount and nature of the debt, as in the forms already given*] ; for which sum of —, or any part thereof, the said” [*&c. as above*] *“have not, nor hath any person by their order or for their use, to the knowledge or belief of this deponent, received any security or satisfaction whatsoever.*

*Deposition where the creditor had before proved a debt under the commission.*

George Brook, of &c. that Joseph Styles, the person against whom this commission of bankrupt is awarded and issued forth was at and before the date and issuing forth of the said commission, and still is, justly and truly indebted unto this deponent and James Ward, his partner, in the sum of £96, for goods sold and delivered ; which with the £100 before proved by this deponent, make together the sum of £196 ; for which said sum of £196, or any part thereof, he, this deponent and his said partner have not, nor hath either of them or to the knowledge or belief of this deponent, hath any other person, to their or either of their use, received any security or satisfaction whatsoever.

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*If any of the creditors live remote from the place of meeting, they may prove their debts by affidavits, to be sworn before a Master in Chancery, ordinary or extraordinary. The following is the form of the affidavits :*

*Affidavit of Debt by a Creditor residing at a distance.*

In the matter of *Joseph Styles*, a bankrupt.

*Samuel Bury*, of —, in the county of —, tanner, maketh oath and saith, that *Joseph Styles*, of — street, in the city of *London*, builder, dealer and chapman, the person against whom a commission of bankrupt hath been lately awarded and issued, and is now in prosecution, was at and before the date and issuing forth of the said commission, and still is, justly and truly indebted to this deponent in the sum of *sixty pounds* [for goods sold and delivered by this deponent unto the said *Joseph Styles*] ; and this deponent saith that he hath not, nor hath any person to his use, had or received any manner of satisfaction or security whatsoever for all or any of the said sum of *sixty pounds* [save and except," &c. as in a deposition]. See ante p. 29, 32.

*Samuel Bury.* { Sworn at — aforesaid,  
this twelfth day of *May*,  
one thousand eight hundred *twenty-seven*.  
before me,

*Court of Commissioners of Bankrupt.*

Exhibited to us this *sixteenth*  
day of *August*, 1826,  
under a commission of bankruptcy  
against *Joseph Styles*. }

\* \* This, when sworn, must be exhibited to and signed by the commissioners, and filed with the proceedings.

*The like by a creditor residing abroad.]* Same as in ordinary cases, except as to the jurat, which is thus :

Sworn at —, this day of —, 1827, before me, a magistrate of —, where the said *J. N.* is now residing.

S. K.

\* \* This must be attested by a notary public, or the British minister or consul of the place ; and the attestation may be in this form :

I, *A. B.* of —, notary public, do hereby attest that the said *J. N.* did on the — day of —, 1825, make this deposition

before the said S. K. at ———, and that the said S. K. is a magistrate of ———, and that the name S. K. is in the hand-writing of the said S. K.

\*.\* To be signed by the notary, and verified by his notorial seal.—The like attestation may be made by a British minister or consul. See i. Ch. 1, § 7.

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*If, from the nature of the debt, the amount of it cannot be immediately ascertained, the creditor will be permitted to enter a claim for it, until regular proof of it be made, thus :*

*Claim by a Creditor.*

George Sheridan, of ——— street, in the city of London, warehouseman, claims a debt of £100, due to the said George Sheridan from Joseph Styles the bankrupt, for [goods sold and delivered.]

\*.\* To be subscribed by the creditor, and signed in the margin by the commissioners.

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*Or if the creditor should be abroad, or the like, and his proof of debt cannot therefore be immediately produced, his clerk or agent will be allowed to enter a claim for it, until the regular proof of it can be given, thus :*

*Claim by a Clerk or Agent.*

James Croft, clerk" [or " agent] to George Sheridan, of ——— street, in the city of London, warehouseman, claims a debt of £100 due to the said George Sheridan from Joseph Styles, the bankrupt, for [goods sold and delivered.]

\*.\* To be subscribed and signed as the last form.

*So the obligee in a bottomry or respondentia bond, or the assured in a policy of insurance, may enter a claim for the amount, and may prove upon the estate afterwards, when the loss or contingency shall have happened (6 Geo. 4, c. 16. s. 53. i. Ch. 1. § 7.) ; thus:*

*Claim upon a Bottomry or Respondentia Bond, or Policy of Insurance.*

John Armstrong, of ——— street, in the city of London, merchant, claims a debt of £500, due from Joseph Styles, the

bankrupt, to the said John Armstrong, as obligee in a certain bottomry" [or "respondentia] bond for that amount, bearing date the — day of —, 1824," [or "as the assured in a certain policy of insurance for that amount, upon goods by the Victory, from Jamaica to London, bearing date — day of —, 1824.]

\* \* \* *To be subscribed and signed as above.*

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*Order for payment of one month's Wages to a Clerk of the Bankrupt, under the 48th section of the 6th Geo. 4, c. 16.*

At the Court of Commissioners of Bankrupts, Basinghall Street, in the City of London, the 16th day of May, 1827.

Whereas it appears to us, the major part of the commissioners in the commission named against *Joseph Styles*, of —, &c. on the oath of *James Tucker*, late clerk to the said *Joseph Styles*, that the said *Joseph Styles* was indebted to the said *James Tucker* in the sum of £75, being six months' wages or salary due to the said *James Tucker* from the said *Joseph Styles* at the date and suing forth of the said commission; we hereby order you to pay the same out of the estate of the said *Joseph Styles*.

To — and —,  
assignees of the estate and effects  
of *Joseph Styles*, a bankrupt. *(Signed by the Commissioners.)*

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*The same in respect of an Apprentice Fee, under the 49th section of the Statute.*

Whereas it appears to us, the major part, &c. on the oath of *James Tucker*, of —, &c. that by indenture bearing date the — day of —, 1826, the said *James Tucker* was bound apprentice to the said *Joseph Styles*, and that the sum of £100 was paid to the said *Joseph Styles*, by or on the behalf of the said *James Tucker*, as an apprentice fee; we, therefore, upon due proof thereof, and taking into consideration the time that the said *James Tucker* hath resided with the said *Joseph Styles*, do hereby order you to pay the sum of £25 to the said *James Tucker*, out of the estate and effects of the said *Joseph Styles*.

To — and —,  
assignees of the estate and effects  
of *Joseph Styles*, a bankrupt. *(Signed by the Commissioners.)*

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*Every instrument exhibited to the commissioners, such as bills of exchange, promissory notes, bonds, affidavits, &c. &c. must have a memorandum thereof indorsed or written on them, thus :*

*Form of an Exhibit.*

Court of Commissioners of Bankrupt, 16th August, 1825.

Exhibited to us, under a commission of bankrupt against Joseph Styles.

\* \* To be signed by three commissioners, if an affidavit or deposition ; but if a security or probate of a will, &c. then by one commissioner only.

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*After all the creditors who have appeared have proved their debts, the solicitor must make out a list of the debts proved, and get it signed by the commissioners, (Ord. Eld. 8th Aug. 1809,) thus :*

*The List of the Debts proved.*

At the Court of Commissioners of Bankrupt, 16th August, 1825.

List of debts proved this day, under a commission of bankrupt against Joseph Styles.

James Windham	-	-	-	-	-	-	-	-	-	£20	0	0
Charles Jameson	-	-	-	-	-	-	-	-	-	30	0	0
George Brook, for self and partner (James Ward)										40	0	0
Andrew Dundas	-	-	-	-	-	-	-	-	-	50	0	0
										£140	0	0

\* \* To be signed by the commissioners.

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*Lastly, having had all the proceedings signed by the commissioners, tack them in their order, with the proceedings of the former meeting ; and, in London commissions, make a short note for the registrar of the particulars required to be registered at his office, (See i. p. 3,) and pay him 11s.*

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## SECOND PUBLIC MEETING.

*As a great proportion of the debts are proved at this meeting, and as the other business which usually occurs at the first public meeting, such as the qualification of a single commissioner, the bankrupt's surrender, &c. may probably be deferred to this meeting, the solicitor should furnish himself with the necessary forms accordingly, and fill them up, &c. as occasion may require, as directed in the last section.*

*The business peculiar to this meeting is, the choice and appointment of Assignees, and the taxation of the solicitor's and messenger's bills.*

*Creditors may either attend themselves and vote, or depute other persons by power of attorney to vote for them, in the choice of assignees. The following is the form of the*

### *Power of Attorney to vote in Choice of Assignees.*

Know all men by these presents, that I, Charles Jameson, of the city of York, innkeeper, one of the creditors of Joseph Styles, against whom a commission of bankrupt under the great seal of Great Britain hath been awarded and issued and is now in prosecution, bearing date at Westminster the —— day of —— one thousand eight hundred and twenty-seven, have made, ordained, constituted and appointed, and by these presents do make ordain constitute and appoint, John Franks, of —— street, in the city of London, merchant, my true and lawful attorney, for me and in my name, place and stead, to appear before the commissioners in and by the said commission named and authorised, or the major part of them, at the Court of Commissioners of bankrupts, Basinghall Street, in the city of London, or elsewhere, at the days and times appointed in the London Gazette for the choice of assignees of the estate and effects of the said Joseph Styles, and then and there for me and in my name to consent with whom the monies to be received from time to time, amounting to the sum of one hundred pounds or upwards, out of the said bankrupt's estate and effects shall remain until the same be divided; and also for me and in my name to vote in the choice of one or more assignee or assignees of the said bankrupt's estate and effects; and also, in case that I, the said Charles Jameson, should happen to be chosen assignee under the said commission against the said Joseph Styles, then as my said attorney, and for me and in my name, to accept the

said trust ; and further to act do and perform all and whatsoever shall be needful and requisite to be done in about or concerning the premises. And I do hereby ratify confirm and allow all and whatsoever my said attorney shall lawfully do or cause to be done for me, by virtue of these presents and of the power and authority hereby to him by me given. In witness whereof I have hereunto set my hand and seal — this day of — in the sixth year of the reign of our Sovereign Lord George the fourth, by the grace of God of the united kingdom of Great Britain and Ireland king, defender of the faith, and in the year of our Lord one thousand eight hundred and twenty-seven.

Sealed and delivered }  
in the presence of }

Charles Jameson. (L. S.)

J. T.

R. W.

\* \* To be written on unstamped paper, and to which must be annexed the following affidavit of the execution thereof, sworn before a Master in Chancery, ordinary or extraordinary ; or the execution may be sworn to, viva voce, before the commissioners. See i. Ch. 1. § 8.

*Affidavit of the execution thereof.*

J. T. of —, gentleman, maketh oath and saith, that he was present and did see Charles Jameson, of the city of York, inn-keeper, duly sign seal and as his act and deed deliver the letter of attorney hereunto annexed, and that the name Charles Jameson, subscribed against the seal of the said letter of attorney, is the proper hand-writing of the said Charles Jameson, and that the names of this deponent, and of R. W., subscribed to the said letter of attorney, as witnesses to the execution thereof, are of this deponent's and of the said R. W.'s own proper respective hand-writing.

J. T

Court of Commissioners of Bankrupt,  
Exhibited to us this  
23d day of May, }  
1827, under a  
commission of  
bankrupt against }  
Joseph Styles.

Sworn at York aforesaid,  
this — day of — in  
the year of our Lord one  
thousand eight hundred  
and twenty-seven, before  
me.

\* \* To be exhibited to the commissioners and signed by them.



*After the creditors present have proved, they, and the creditors who have before proved their debts, (being creditors respectively to the amount of £10 and upwards,) and the persons appointed by power of attorney as above-mentioned, retire and make choice of one or more persons, usually the most considerable of the creditors, as assignees, though it is not necessary that they should be creditors; and they thereupon sign the following memorandum thereof, and the assignees their acceptance.*

*Memorandum of the Choice of Assignees.*

**At the Court of Commissioners of Bankrupts, Basinghall Street, in the City of London, the 23d day of May, 1827.**

**Memorandum.** This being the day appointed in the London Gazette for the choice of Assignees of the estate and effects of *Joseph Styles*, the person against whom the commission of bankrupt now in prosecution hath been awarded and issued, we, whose names are hereunder written, being the major part of the creditors of the said *Joseph Styles* present at this meeting, and who have proved our debts to be ten pounds and upwards, have chosen and do hereby nominate and choose *James Galbraith and Christopher Jameson, both of London, merchants*, to be the assignees of the estate and effects of the said *Joseph Styles*, and we do desire that an assignment thereof be made to them by the commissioners under the said commission accordingly.

**James Windham.**

**For Charles Jameson (by power of attorney in this behalf) John Franks.**

**George Brook, for self and Co.**

**We accept of the said trust,**

**James Galbraith,**

**Christopher Jameson.**

**Memorandum.** That before the creditors of the said bankrupt proceeded to the choice of the above assignees, the major part in value of the creditors present at such meeting did direct that when the monies arising by and to be received from time to time out of the said bankrupt's estate should amount to £100 and upwards, the same should from time to time be paid into and remain with *Messrs. V. W. and Co., bankers, London*, in the name of the said assignees, until the same should be divided amongst the creditors.

**James Windham.**

**For Charles Jameson (by power of attorney in this behalf) John Franks.**

**George Brook, for self and Co.**

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*The commissioners then execute the assignment to the assignees, and a bargain and sale, if the bankrupt were seized of real property; or they join with the provisional assignee in such assignment or bargain and sale, where there has previously been a provisional assignment. The following are the forms; any of which may be had, in blank, at the stationers. The solicitor to the commission should bring with him to this meeting such of them as are requisite, filled up and ready for execution.*

#### *Assignment.*

This Indenture, made the — day of — in the year of our Lord one thousand eight hundred and twenty-five, between A. B., C. D. and E. F., esquires, the major part of the commissioners named, authorised, and appointed in and by a certain commission of bankrupt awarded and issued against Joseph Styles of — street, in the city of London, builder, dealer and chapman, of the one part, and L. M. of —, merchant, and O. P. of —, malster, of the other part: Whereas his Majesty's commission under the Great Seal of Great Britain, grounded upon the statute made and now in force concerning bankrupts, bearing date at Westminster the — day of — last, hath been awarded and issued against the said Joseph Styles, directed to the said A. B., C. D. and E. F., esquires, together with G. H., esquire, and I. K., gentleman, thereby giving full power and authority unto them the said commissioners, four or three of them, to execute the same; as in and by the said commission, relation being thereunto had, may more fully and at large appear. And whereas the major part of the said commissioners have duly qualified themselves to act in the said commission, by taking the oath required for that purpose; and, having begun to put the said commission into execution, upon due examination of witnesses and other good proof upon oath before them taken, have found that the said Joseph Styles did, for the space of [two] years and upwards, now last past, before the date and suing out of the said commission, carry on and follow the trade and business of a builder; and during all that time did seek and endeavour to get his livelihood thereby, as others of the same trade and business usually do; and that the said Joseph Styles, so seeking and endeavouring to get his livelihood thereby, became indebted to John Nokes of — street, in the said city of London, merchant, in the sum of one hundred and seventy-four pounds, and being so indebted as aforesaid, did, before the date and suing forth of the said commission, in the judgment of the major part of the said commissioners, become bankrupt to all intents and purposes within the true meaning

of the statute in the said commission named, and was by them declared bankrupt accordingly. And whereas on the day of the date of these presents, being the day appointed according to the notice in the London Gazette, for the choice of an assignee or assignees of the said bankrupt's estate and effects, at the Court of Commissioners of Bankrupt, London, the major part in value of the creditors of the said Joseph Styles then present, whose debts amounted to the sum of ten pounds and upwards respectively, did then and there nominate and choose the said L. M. and O. P.\* to be the assignees of the estate and effects of the said Joseph Styles. Now this indenture witnesseth that the said commissioners, parties to these presents, in further execution of the said commission, and by force and virtue thereof, and of the said statutes therein mentioned, and for and in consideration of the sum of five shillings a piece of lawful money of Great Britain, to them the said commissioners, parties to these presents, in hand paid by the said L. M. and O. P. at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) and also for and in consideration of the covenants hereinafter contained on the part and behalf of the said L. M. and O. P., their and every of their executors and administrators to be kept, done, and performed, and to and for the uses, intents, and purposes hereinafter mentioned and expressed, Have and each of them hath ordered, disposed, bargained, sold, assigned, transferred, and set over, and by these presents (as much as in them the said commissioners, parties to these presents, lieth, and they lawfully may,) do, and each of them doth order, dispose, bargain, sell assign, transfer, and set over unto the said L. M. and O. P., their executors, administrators and assigns, all and singular the goods, chattels, wares, merchandizes, effects, debts, sum and sums of money, and all other personal estate whatsoever and wheresoever, as well joint as separate, whereof the said Joseph Styles was possessed of, interested in, or entitled unto at the time he became bankrupt, or at any time since; and all the estate, right, title, or interest; equity of redemption, property, claim and demand, whatsoever, of him the said Joseph Styles, of, in or to the premises or any part thereof, to have and to hold receive and take, the said goods, chattels, wares and merchandizes, debts, sum and sums of money, and effects, and all and singular other the premises hereinafore ordered, disposed, bargained, sold, assigned, transferred, and set over, and mentioned or intended so to be, and every part and parcel thereof, unto the said L. M. and O. P., their executors, administrators and assigns, from henceforth as their own proper goods and chattels for ever; in trust, nevertheless, to and for the use, benefit and advantage of them the said L. M.

and O. P. and all such other of the creditors of the said Joseph Styles as have already sought, or shall hereafter in due time come in as creditors and seek, relief, by virtue of the said commission, according to the limitations and directions of the statute in that behalf made and provided, and to and for no other use, intent or purpose whatsoever. And the said L. M. and O. P. for themselves, their and every of their heirs, executors and administrators respectively, do hereby jointly and severally covenant, promise and agree to and with the said commissioners, parties to these presents, their executors and administrators, and each and every of them, by these presents, in manner following, that is to say, That they the said L. M. and O. P., their executors, administrators and assigns, and every of them, shall and will, with all convenient speed, use their utmost and best endeavours and means to recover and get into their hands all and singular the goods, chattels, wares and merchandizes, debts, and effects, whatsoever and wheresoever, of or belonging to the said Joseph Styles, mentioned or intended to be hereby assigned, and after possession or recovery thereof had and obtained, shall and will, with the like convenient speed, make sale and disposition of the same for the most and best price that may or can be had or gotten for the same, at the time of such sale; and also shall and will use their utmost endeavours to receive, recover and get in, all and every the debts, sum and sums of money, due and owing to the said Joseph Styles or his estates; and further, that they the said L. M. and O. P., their executors and administrators respectively, shall and will give, from time to time, and at all times hereafter, upon every reasonable request and notice in writing to them, the said L. M. and O. P. or either of them, given for that purpose by the major part of the commissioners by the said commission authorised as aforesaid, a just and true account in writing of all and every such sum and sums of money, or other satisfaction, as they the said L. M. and O. P., their executors and administrators respectively, shall have then received, obtained, and raised, by force, virtue or means of this present deed of assignment, or otherwise, out of the estate of the said Joseph Styles, and all such monies and other satisfaction as upon every such account shall appear to be raised, obtained, and received by them the said L. M. and O. P., their executors and administrators respectively, they the said L. M. and O. P., their executors and administrators respectively, shall and will, well and truly pay, or cause to be paid, unto to the said commissioners, parties to these presents, or to the major part of the commissioners by the same commission named and authorised, or in any renewed commission against the said Joseph Styles, to be named and authorised, or to such person or persons as they shall direct or appoint,

to the end that the same may be by them ordered, disposed, distributed and divided, unto and amongst all and every the creditors of the said Joseph Styles who have already sought, or shall hereafter in due time come in and seek, relief by virtue of the said commission, according to the statute in that case made and provided, and in the mean time, until such dividend or dividends shall be made as aforesaid, they the said L. M. and O. P. shall and will, from time to time, as and when the money to be received by them or either of them from or out of the said bankrupt's estate and effects shall amount to one hundred pounds and upwards, pay the same in the name of them the said L. M. and O. P. into the hands of [Messrs. V. W. & Co., bankers, London,] for safe custody, there to remain for the benefit of the creditors of the same bankrupt, and subject to the order of the said commissioners, or the major part of them. And the said L. M. and O. P., for themselves, their heirs, executors and administrators respectively, do hereby further covenant, promise and agree to and with the said commissioners, parties to these presents, and every of them, their and every of their executors and administrators, that they the said L. M. and O. P., their heirs, executors and administrators respectively, shall and will from time to time and at all times hereafter, well and sufficiently save, defend, keep harmless and indemnified, all the said commissioners in the said commission named, or in any renewed commission to be named and authorised, and every of them, their and every of their heirs, executors and administrators, clerks, messengers, and servants, and their and every of their lands and tenements, goods and chattels, of and from all and all manner of action and actions, suits, costs and damages whatsoever, which shall or may be commenced, sued, or prosecuted against them or any of them, or which they or any of them shall or may bear, sustain, pay, be put unto, for or by reason of this present deed of assignment, or any other act or acts, thing or things whatsoever, by them or any of them lawfully acted or done, or to be lawfully acted or done, by virtue of the said commission, or their or any of their lawful intermeddling in any of the estate and effects of the said Joseph Styles, by virtue or colour thereof. In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered  
by the within named L. M.  
and O. P., in the presence  
of

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*\* \* \* To be engrossed on unstamped parchment. Blank forms may be had at the stationers.*

*Bargain and Sale.*

\* \* *Copyhold Estates should not be included, but be conveyed immediately to a purchaser. See 6 Geo. 4. c. 16. § 63. 68.*

*Same as the last form, to the asterisk,\* and then thus* to be assignees of the estate and effects of the said Joseph Styles, and desired the commissioners to make an assignment thereof to them accordingly ; and the said commissioners did thereupon accordingly order, bargain, sell, assign, and set over all the personal estate and effects of the said Joseph Styles unto the said L. M. and O. P., in trust for themselves and all such other of the creditors of the said Joseph Styles who should be entitled to the benefit and advantage of the said estate and effects, as in and by the said assignment is mentioned ; and whereas the said commissioners, parties to these presents, in further execution of the said commission, do find that the said Joseph Styles, at the time he became a bankrupt, and before the date and suing forth of the said commission, was seised to him and his heirs of [certain freehold estates situate at — in the county of —, or otherwise interested in and entitled to the same, subject to certain mortgages and incumbrances thereon] : Now this indenture witnesseth, that the said commissioners, parties to these presents, in further execution of the said commission, and by force and virtue of the same and of the statute therein mentioned, and for and in consideration of the sum of five shillings of lawful money of Great Britain, to them in hand well and truly paid by the said L. M. and O. P. at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) and also for and in consideration of the covenants and agreements hereinafter reserved and contained on the part and behalf of the said L. M. and O. P., their heirs, executors and administrators, to be observed and performed, have granted, bargained, sold, assigned, and set over, and by these presents do (as much as in them lieth and they lawfully may) grant, bargain, sell, assign, and set over, unto the said L. M. and O. P., their heirs and assigns, all” [*&c. here insert a description of the parcels*] “and also all other the freehold messuages, lands, tenements, and hereditaments, situate, lying and being in the said county of — or elsewhere, whereof, wherein or whereunto, the said Joseph Styles, at the time he became a bankrupt, or at any time since, had any estate, right, title, or interest in possession, reversion, remainder, or expectancy, or otherwise howsoever, together with all and singular houses, outhouses, edifices, buildings, ways, paths, passages, waters, watercourses, lights, easements, hedges, ditches, gates, stiles, fences, profits, commodities

privileges, and hereditaments, whatsoever, to the said freehold estates and premises belonging, or in anywise appertaining, or accepted, reputed, taken, used, occupied or enjoyed, as part, parcel, or member thereof; and all the estate, right, title, interest, use, trust, property, benefit, power, equity of redemption, claim and demand, whatsoever, both at law and in equity, of him the said Joseph Styles, or of them the said commissioners by virtue of the said commission, of, in, and to the same premises; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; together with all deeds, evidences and writings, touching or concerning the same or any part or parcel thereof; to have and to hold the said freehold estates, and all and singular other the premises hereinbefore mentioned and intended to be hereby granted, bargained, sold and assigned, with their and every of their appurtenances, unto the said L. M. and O. P., their heirs and assigns, for ever, to the use of them the said L. M. and O. P., their heirs and assigns, for ever, (subject, nevertheless, to such mortgage or mortgages, or other charges and incumbrances, if any such there be, as the same premises are subject to,) in trust, nevertheless, and to and for the several uses of them the said L. M. and O. P., and all such other creditors of the said Joseph Styles who have already sought, or shall hereafter in due time come in and seek relief by virtue of the said commission, and to and for no other use, trust, intent or purpose, whatsoever. And the said L. M. and O. P. do hereby for themselves severally and respectively, and for their several and respective heirs, executors and administrators, and not the one of them for the other of them, or for the heirs, executors or administrators of the other of them, covenant, promise and agree to and with the said commissioners, parties to these presents, and to and with each and every of them, their executors and administrators, in manner following, that is to say, that each of them the said L. M. and O. P., and their heirs, shall and will, with all convenient speed, use his and their best means and endeavours, by suit at law or otherwise, to enter upon and get possession of all and singular the hereinbefore bargained, sold, and assigned premises; and after such possession had and obtained, with convenient speed to make sale and disposition thereof, and accordingly sell and dispose of the same to and for the best value, profit and advantage, that he or they can get for the same; and further, that each of them the said L. M. and O. P., their heirs, executors and administrators, shall and will, from time to time, and at all times hereafter, upon reasonable notice, render and give unto the major part of the commissioners by the said commission named and authorized, or in any renewed

commission to be named and authorized to take the same, at such time as they shall appoint, a true, just, fair and perfect account in writing, under the hands of them the said L. M. and O. P., their heirs, executors or administrators, of how much money or other satisfaction they the said L. M. and O. P., their heirs, executors or administrators, shall have received or recovered by virtue or means of this present deed of bargain and sale or assignment or otherwise, out of the estate and effects of the said Joseph Styles; and all such money or other satisfaction as upon every such account shall appear to have been had and received by the said L. M. and O. P. or either of them, their heirs, executors or administrators respectively, they the said L. M. and O. P., their heirs, executors or administrators respectively, shall and will duly pay or cause to be paid unto the major part of the said commissioners by the said commission authorized, or in any renewed commission to be named and authorized, or to such person or persons as they shall appoint to receive the same, to the end the said monies may be by such commissioners as aforesaid, or the major part of them, ordered, disposed, distributed, and divided unto and amongst all and every the creditors of the said Joseph Styles who have already sought, or shall hereafter, in due time, come in and seek, relief by virtue of the said commission, according to the statute in that case made and provided; and lastly, that they the said L. M. and O. P., their executors and administrators, shall and will, from time to time, and at all times hereafter, save, defend, keep harmless and indemnified, all and every the said commissioners in the said commission named, as aforesaid, their executors and administrators, agents and servants, and every of them, their and every of their goods and chattels, lands and tenements, of, from, touching and concerning all and all manner of actions, suits, costs, damages, and expenses, whatever, which shall or may arise or happen, or which they the said commissioners or any of them, or their or any of their heirs, executors or administrators, agents or servants, shall or may sustain, bear, pay or be put unto, for or by reason of this present deed of bargain and sale or assignment, or any other act or thing whatsoever by them or any of them lawfully acted or done or to be acted or done by virtue of the said commission, or by reason of their or any of their lawful intermeddling in any of the estate of the said Joseph Styles. In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first herein written.

Signed [&c.

\* \* \* *To be engrossed on unstamped parchment and enrolled.  
Blank forms may be had at the Stationers,*



*Assignment after a Provisional Assignment.*

This Indenture, of three parts, made the — day of — in the year of our Lord one thousand eight hundred and twenty-seven, between William Burwood, [*the provisional assignee*] of —, gentleman, of the first part; A. B., C. D. and E. F., esquires, the major part of the commissioners named and authorized in a commission of bankrupt awarded and issued and now in prosecution against Joseph Styles of — street, in the city of London, builder, dealer and chapman, of the second part; and L. M. of —, merchant, and O. P. of —, maltster, of the third part: Whereas his Majesty's commission under the Great Seal of Great Britain, grounded upon the statute made and now in force concerning bankrupts, bearing date at Westminster the — day of — last past, hath been awarded and issued against the said Joseph Styles, and directed to the said A. B., C. D. and E. F., together with G. H., esquire, and J. K., gentleman, thereby giving full power and authority to the said commissioners, four or three of them, to execute the same commission, as by the said commission, relation being thereunto had, will more fully and at large appear; and whereas upon the execution of the said commission, it appeared to the major part of the commissioners in the said commission authorized, upon the due examination of witnesses and other sufficient proof upon oath, that the said Joseph Styles had for the space of two years before the issuing of the said commission, carried on the trade and business of a builder, and did by such trade and business seek and endeavour to get his living as others of the same trade usually do; and in the course of his said trading and dealing became indebted unto John Nokes of — street, in the said city of London, merchant, in the sum of one hundred pounds and upwards; and whereas the said Joseph Styles did, in the judgment of the major part of the said commissioners, become bankrupt to all intents and purposes within the compass, true intent and meaning of the statute made and now in force concerning bankrupts, before the date and suing forth of the said commission, and they did adjudge and declare him bankrupt accordingly; and whereas by indenture bearing date the — day of — last, and made or mentioned to be made between the said A. B., C. D., and E. F., of the one part, and the said William Burwood of the other part, after reciting as is hereinbefore recited, and also reciting that the said commissioners, parties thereto, in further execution of the said commission and of the statute therein mentioned, had also found out and discovered, or it otherwise appeared to them, that the said Joseph Styles, at the time he became bankrupt as aforesaid or afterwards,\* was possessed of, interested in, or well intitled unto

sundry goods, wares, chattels, merchandizes, stock in trade, household stuff, implements of household, bedding, plate, linen, and other things, and that there were also divers debts, sum and sums of money, due and owing unto the said Joseph Styles and his estate, from several persons; and also further reciting that the said commissioners, parties thereto, thought it necessary, for the better preserving and securing the estate of the said Joseph Styles, to appoint an assignee provisionally of his estate and effects, until choice should be made by the major part in value of the creditors of an assignee or assignees of the estate and effects of the said bankrupt, pursuant to notice to be given in the London Gazette for that purpose; it was witnessed that the said commissioners, parties thereto, for the consideration therein mentioned, did thereby appoint the said William Burwood assignee of the estate and effects of the said Joseph Styles, and did also, as much as in them lay and they lawfully might, order, bargain, sell, dispose, assign and set over unto the said William Burwood, his executors, administrators and assigns, all and singular the goods, wares and merchandizes, chattels, stock in trade, debts, sum and sums of money, and all other the personal estate whatsoever of the said Joseph Styles, of which he was possessed or entitled unto, or of which any other person or persons was or were possessed in trust for him, at the time he became bankrupt or at any time since, to hold, ask, demand, sue for, recover, levy and receive, all and singular the premises thereby assigned or mentioned, or intended so to be, unto the said William Burwood, his executors, administrators or assigns, in trust, for the immediate preservation thereof, and to and for the use, benefit and advantage of all the creditors of the said Joseph Styles, who had then sought, or should thereafter in due time come in and seek, relief under the said commission, according to the statute therein mentioned, and to and for no other use, trust, intent or purpose whatsoever, as in and by the said recited indenture, relation being thereunto had, will more fully and at large appear; and whereas the said William Burwood did, in and by the said recited indenture or assignment, covenant and agree to and with the said commissioners, parties thereto, their executors and administrators, and to and with every of them, that he the said William Burwood, his executors or administrators, or some or one of them, should or would, as soon as an assignee or assignees of the estate and effects of the said bankrupt should be duly chosen and appointed, join with the major part of the commissioners authorized by the said commission, in assigning all and singular the said goods, chattels, debts, sum and sums of money, wares and merchandizes, and all other the premises

in the said recited indenture assigned to him, unto such person or persons as should be duly chosen and appointed to be the assignee or assignees of the estate and effects of the said bankrupt, and that he the said William Burwood would deliver up all the estate and effects of said the bankrupt as should or might have have come to his hands or possession, or to the hands or possession of any other person in trust for him or for his use, unto such person or persons as should be chosen assignee or assignees of the estate and effects of the said bankrupt, or otherwise as the said commissioners should direct or appoint, as in and by the said recited indenture may more fully and at large appear; and whereas at a meeting of the major part of the commissioners in and by the said commission named and authorized, at the Court of Commissioners of Bankrupts in Basinghall Street, in the city of London, on the day of the date of these presents, pursuant to notice in the London Gazette for that purpose given, the major part in value of the creditors of the said Joseph Styles then present, and who had proved their debts under the said commission, and whose debts respectively amounted to ten pounds or upwards, did nominate, elect, and choose the said L. M. and O. P. to be assignees of the estate and effects of the said Joseph Styles, and desired an assignment thereof to be made to them accordingly by the said William Burwood and the said commissioners: Now **THIS INDENTURE WITNESSETH**, that the said William Burwood, for and in consideration of the sum of ten shillings of lawful money of Great Britain to him in hand paid by the said L. M. and O. P. at or before the sealing and delivering of these presents, in pursuance of the above mentioned covenant in the above recited indenture mentioned, with the consent and by the direction of the said commissioners, parties to these presents, testified by their being parties to and sealing and delivering these presents, hath ordered, bargained, sold, disposed, assigned and set over, and by these presents doth order, bargain, sell, dispose, assign and set over unto the said L. M. and O. P., their executors and administrators, all and singular the goods, wares and merchandizes, chattels, stock in trade, debts, sum and sums of money, household stuff and implements of household, and all other the personal estate whatsoever, of the said Joseph Styles, of which he was possessed or entitled unto, or of which any other person or persons was or were possessed in trust for him when he became bankrupt, or at any time since, and all the right, title, interest, property, claim and demand whatsoever, of him the said William Burwood, of, in, or to the same, or any part thereof, as assignee of estate and effects of the said Joseph Styles. And the said commissioners, parties to these presents,

being the major part of the commissioners in and by the said commission named and authorized, in consideration of five shillings to each of them in hand also paid by the said L. M. and O. P., have ratified and confirmed, and by these presents do, as much as in them lieth, and they lawfully may ratify and confirm unto the said L. M. and O. P. all and singular the said goods, wares and merchandizes, chattels, stock in trade, debts, sum and sums of money, household stuff and implements of household, and all other the estate and effects whatsoever, of or belonging to the said Joseph Styles, hereinbefore ordered, bargained, sold, disposed, assigned, and set over by the said William Burwood, TO HAVE and to hold, ask, demand, sue for, recover, levy, and receive, the said goods, wares and merchandizes, chattels, stock in trade, debts, sum and sums of money, household stuff and implements of household, and all other the effects whatsoever of or belonging to the said Joseph Styles, hereby ordered, bargained, sold, disposed, assigned, and set over, or hereby mentioned or intended so to be, unto the said L. M. and O. P., their executors, administrators and assigns, upon trust, nevertheless, that is to say, to and for the use, benefit and advantage of all the creditors of the said Joseph Styles who have already sought, or shall hereafter in due time come in and seek, relief by virtue of the said commission, according to the limitations and directions of the statute in that case made and provided, and to and for no other use, intent or purpose whatsoever. And the said L. M. and O. P. do hereby for themselves severally and respectively, and for their several and respective heirs, executors and administrators, and not the one of them for the other of them, or for the acts, deeds or defaults of the other of them, but each for himself separately, and for his own separate acts, deeds, and defaults only, covenant, promise and agree to and with the said commissioners, parties to these presents, and to and with every of them, by these presents, that they the said L. M. and O. P., their executors, administrators and assigns, shall and will, with all convenient speed, by all lawful and equitable ways and means, use their utmost endeavours to recover and get in the several goods, wares and merchandizes, chattels, stock in trade, debts, sum and sums of money, household stuff and implements of household, and all other the estate and effects whatsoever of the said Joseph Styles, and shall and will sell and dispose of the same, to and for the most money and best price they can get for the same; and further, that the said L. M. and O. P., their executors, administrators and assigns, shall and will, from time to time, and at all times hereafter, upon reasonable request or notice to them given for that purpose, render and give unto the said commissioners, parties to these presents, or to the major

part of the said commissioners in and by the said commission named and authorized, and the major part of the commissioners to be named in and by any renewed commission which may be awarded against the said Joseph Styles, at such time and place as they shall appoint, a true, just and perfect account in writing, under the hands of the said L. M. and O. P., their executors or administrators, of what and how much money and other satisfaction they the said L. M. and O. P., their executors or administrators, shall have had, recovered and received, by virtue or means of this present deed of assignment or otherwise, out of the estate and effects of the said Joseph Styles; and such money or other satisfaction as upon such account shall appear to be had, raised and received by the said L. M. and O. P., their executors or administrators, they the said L. M. and O. P., their executors or administrators, shall and will well and truly pay or cause to be paid unto them the said commissioners, parties to these presents, or the major part of the said commissioners in and by the said commission named, or to the commissioners to be named in any such renewed commission or the major part of them, or to such person or persons as they shall appoint, to the end the same or other satisfaction may be by them the said commissioners in and by the said commission named and authorized, or the major part of them, ordered, disposed, distributed and divided unto and amongst all and every the creditors of the said Joseph Styles, who have already sought, or shall hereafter in due time come in and seek, relief by virtue of the said commission, according to the limitations and directions of the statute therein mentioned, proportionably according to the several debts owing to them severally and respectively from the said Joseph Styles, and in the mean time until such dividend shall be made as aforesaid, they the said L. M. and O. P., shall and will from time to time, as and when the money to be received by them or either of them from or out of the said bankrupt's estate and effects shall amount to the sum of one hundred pounds or upwards, pay the same in the joint names of the said assignees into the hands of ———— for safe custody, there to remain for the benefit of the said bankrupt's creditors, and subject to the order of the said commissioners, or the major part of them; and lastly, that they the said L. M. and O. P., the executors and administrators, shall and will from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless and indemnified, the said commissioners in and by the said commission named and authorized, or in and by any renewed commission to be named and authorized, and also the said William Burwood, their and his messengers, agents, servants, executors and administrators, and every of them, their and every of their bodies, lands, tenements, goods and chattels, of, touch-

ing, or concerning all and all manner of action and actions, suits, arrests, troubles, costs, damages and expenses whatsoever, which they or any of them shall sustain or be put unto, for or by reason of this present deed of assignment, or any other act or acts, thing or things, lawfully done or executed by virtue of the said commission or the said recited assignment, or their or any of their lawful intermeddling in any of the estate or effects of the said Joseph Styles. In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first herein written.

Signed, sealed and delivered by the within named — in the presence of

*Bargain and Sale after a Provisional Bargain and Sale.*

Same as the last form to the asterisk,\* and then thus:] was seised or possessed of, or interested in, or entitled to several freehold lands, messuages, or tenements and estates in the county of — and elsewhere, and that the said commissioners (parties thereto and to these presents) thought it necessary, for the better preserving and securing such the real estates of the said Joseph Styles, to appoint an assignee provisionally until choice should be made by the major part in value of the creditors, of an assignee or assignees of the estate and effects of the said bankrupt, pursuant to notice to be given in the London Gazette for that purpose: It was, by the said Indenture, now in recital, witnessed, that the said commissioners, (parties thereto and to these presents,) for the purposes therein and hereinbefore mentioned, and in further execution of the said commission and of the statute therein mentioned, and by force and virtue thereof, and for other the considerations therein mentioned, did, as much as in them the said commissioners lay and they lawfully might, order, grant, bargain, and sell unto him the said William Burwood, his heirs and assigns, all the said bankrupt's messuages, lands, tenements and hereditaments, situate and being in the county of — and elsewhere, and all the estate, right, title, interest, use, trust, property, possession, benefit, equity of redemption, claim and demand whatsoever, which he the said Joseph Styles, at the time of his becoming bankrupt as aforesaid, had, of, in, or to the same or any part thereof; to hold all and singular the said messuages, lands, tenements and hereditaments, with their and every of their appurtenances, unto and to the use of the said William Burwood, his heirs and assigns, for ever, in trust, nevertheless, for the immediate pre-

servation thereof, but to and for the use, benefit and advantage of all the creditors of the said Joseph Styles, who had then sought, or should in due time come in and seek, relief under the said commission, according to the statute therein mentioned, and to and for no other use, trust, intent or purpose whatsoever; as in and by the said recited indenture, relation being thereunto had, will more fully and at large appear; and whereas the said William Burwood did, in and by the said recited indenture of bargain and sale, for himself, his heirs, executors and administrators, and for every of them, covenant, promise and agree to and with the said commissioners, (parties thereto and to these presents,) their heirs, executors and administrators, that he the said William Burwood, his heirs, executors or administrators, some or one of them, should and would, as soon as an assignee or assignees of the said bankrupt's estate and effects should be duly chosen, pursuant to notice in the London Gazette, and when he should be thereunto required for that purpose, join with the major part of the commissioners named in the said commission, in the granting, bargaining, and selling all and singular the said messuages, lands, tenements and hereditaments, and all other the premises therein and hereinbefore mentioned and intended to be thereby bargained and sold, unto such person or persons who should be duly chosen and appointed to be assignee or assignees of the said bankrupt's estate; and that he the said William Burwood should and would deliver up all the estate and effects of the said bankrupt as should or might come to his hands or possession, or to the hands or possession of any other person or persons in trust for him or for his own use, unto such person or persons as should be duly chosen assignee or assignees of the said bankrupt's estate or effects, or otherwise as the said commissioners should direct or appoint: and whereas, at a meeting of the major part of the commissioners in and by the said commission named and authorized, at the Court of Commissioners of Bankrupt, London, on the day of the date of these presents, pursuant to notice in the London Gazette for that purpose given, the major part in value of the creditors of the said Joseph Styles then present, who had proved their debts under the said commission, and whose debts respectively amounted to ten pounds or upwards, did nominate, elect and chuse the said L. M. and O.P. to be assignees of the estate and effects of the said Joseph Styles, and desired a bargain and sale thereof to be made to them accordingly by the said William Burwood and the said commissioners: Now THIS INDENTURE WITNESSETH, that for and in consideration of the sum of five shillings of lawful money of Great Britain to him the said William Burwood in hand

paid by the said L. M. and O. P. at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and also for and in consideration of the covenants hereinafter contained on the part and behalf of the said L. M. and O. P., their heirs, executors and administrators, to be performed and done, he the said William Burwood, by and with the privity, consent and direction of the said A. B., C. D., and E. F., the major part of the commissioners named and authorized in and by the said commission, testified by their being parties to and sealing and delivering these presents, hath bargained and sold, and by these presents doth bargain and sell unto the said L. M. and O. P., and their heirs, all and singular the said freehold messuages, lands, tenements and hereditaments, situate and being in the county of ——— or elsewhere, in the kingdom of Great Britain, late of him the said Joseph Styles, together with all and singular, houses, out-houses, edifices, buildings, barns, stables, gardens, orchards, curtilages, meadows, feeding, trees, woods, underwoods, commons, common of pasture, ways, waters, water-courses, ponds, pools, ways, paths, passages, and all other rights, liberties, privileges, profits, commodities, advantages, emoluments and appurtenances whatsoever, to the said messuages, lands, tenements, hereditaments, and premises so remaining unsold and undisposed of as aforesaid, or any part or parcel thereof, belonging or in any wise appertaining, or therewith or with any part thereof at any time heretofore held, used, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof; and all the estate, right, title, interest, use, trust, property, possession, benefit, equity of redemption, claim and demand whatsoever, of him the said William Burwood, of, in, and to the said hereditaments and premises hereinbefore bargained and sold, or intended so to be, or any part or parcel thereof, as provisional assignee of the real estates of the said Joseph Styles as aforesaid. And the said commissioners, parties to these presents, for and in consideration of the sum of five shillings a piece of like lawful money of Great Britain to them in hand also paid by the said L. M. and O. P. at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have and each and every of them hath ratified and confirmed, and by these presents do and each and every of them doth, (as much as in them lieth and they lawfully may,) ratify and confirm unto the said L. M. and O. P., and their heirs, the said freehold messuages, lands, tenements and hereditaments, situate and being in the said county of ——— or elsewhere, in the kingdom of Great Britain, late of him the said Joseph Styles, remaining unsold and undisposed of by the



said William Burwood, with their and every of their appurtenances, and hereinbefore bargained and sold or intended so to be as aforesaid ; to have and to hold, the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereinbefore mentioned, to be hereby bargained and sold, ratified and confirmed, or intended so to be, and every part and parcel thereof, with their and every of their rights, members and appurtenances, unto the said L. M. and O. P., and their heirs, to the only proper use and behoof of the said L. M. and O. P., their heirs and assigns for ever, according to the right and interest of the said William Burwood therein, subject to such mortgage or mortgages, or other charges or incumbrances, (if any such there be,) as the same are legally charged with or liable to, in trust, nevertheless, to and for the use, benefit, satisfaction, and payment of them, the said L. M. and O. P., and all other the creditors of the said Joseph Styles who have already sought, or shall in due time hereafter come in and seek, relief under the said commission, or in any renewed commission against the said Joseph Styles, and duly prove and ascertain their respective debts under the same, according to the directions and limitations of the said statute. And the said L. M. and O. P. do hereby for themselves severally and respectively, and for their several heirs, executors and administrators, and not jointly or the one of them for the other of them, but each of them for his own heirs, executors and administrators, acts and deeds only, covenant, promise and agree to and with the said commissioners, parties to these presents, their heirs, executors and administrators, in manner following, (that is to say,) that they, the said L. M. and O. P., their heirs and assigns, shall and will, with all convenient speed, use their best endeavours, by suits at law or otherwise, to recover and get possession of all and singular the said messuages, lands, tenements and hereditaments, hereinbefore bargained and sold, or mentioned or intended so to be, with their and every of their appurtenances, and shall and will, after recovery and possession had of the same or any part thereof, make sale and disposition thereof, and of every part thereof, with the like convenient speed, for the most money and best price they or any of them can or may obtain for the same ; and further that they the said L. M. and O. P., their heirs, executors and administrators, shall and will, from time to time, and at all times hereafter, upon a reasonable request or notice to them for that purpose, given under the hands of the commissioners by the said commission, or any renewed commission authorized as aforesaid, or the major part of them, give and render to the said commissioners or the major part of them a just and true account of all and every such sum or sums of money, or

other satisfaction, which they the said L. M. and O. P., their heirs, executors or administrators respectively, shall or may have received, obtained or raised, by virtue of these presents, or by means of the present deed of bargain and sale, out of the estate of the said Joseph Styles hereby bargained and sold ; and all such monies or other satisfaction as shall appear to be so by them respectively received, had, obtained, or raised as aforesaid, they the said L. M. and O. P. shall and will, (after all just allowances thereout deducted,) upon the like reasonable request, well and truly pay, satisfy and render, or cause to be paid, satisfied, and rendered, to them the said commissioners so authorized, or the major part of them, or as they or the major part of them shall direct or appoint under their hands, to the end the same monies or other satisfaction may be, by them the said commissioners in and by the said commission or any renewed commission authorized, or the major part of them, ordered, disposed, distributed, and divided, unto and amongst all and every the creditors of the said Joseph Styles who have already come in and sought relief, or shall hereafter in due time come in and seek relief, by virtue of the said commission, according to the limitations of the said statute therein mentioned as aforesaid, to the end the same monies and other satisfaction may be answered and paid to the creditors seeking relief as aforesaid, proportionably, according to their several debts due and owing to them respectively from the said Joseph Styles, according to the order of dividend to be made by the said commissioners of the same ; and lastly, that they the said L. M. and O. P. shall and will, from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless and indemnified, as well the said commissioners, parties to these presents, in and by the said commission named and authorized, or in any renewed commission to be named and authorized, and their heirs, executors and administrators, and every of them, and their and every of their bodies, goods, chattels, lands and tenements, and every of them; their and every of their messengers, agents, and servants, who have been by them or any of them employed in or about the execution of the said commission, of, from, and against all and all manner of action and actions, suits, troubles, charges, damages, and expenses whatsoever, that shall or may at any time or times hereafter, arise, happen or come unto them the said commissioners, or any or either of them, or any of their messengers, agents, servants, heirs, executors or administrators, for or by reason or means of the present deed of bargain and sale, or any other matter or thing by them, or any or either of them, lawfully acted or done, by virtue of the said recited commission, or by their or any or

either of their lawfully intermeddling in the estate and effects of the said Joseph Styles. In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first herein written.

Signed, sealed and delivered by the within named — in the presence of

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*Memorandum of the Execution of the Assignment, and Taxing Solicitor's and Messenger's Bills.*

At the Court of Commissioners of Bankrupt,  
the 23d day of May, 1827.

Memorandum, That we, whose names are hereunto subscribed, being the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued and now in prosecution against *Joseph Styles*, of — street, in the city of *London*, builder, dealer and chapman, met on the day and year, and at the place above-mentioned, and executed an assignment of the said bankrupt's estate and effects, [and a bargain and sale of all his real estate,] to *L. M.*, of —, merchant, and *O. P.*, of —, malster, the assignees appointed and chosen by the creditors of the said bankrupt's estate and effects; and at the same time and place taxed and allowed the petitioning creditor's bill of costs at £—, and the messenger's bill at £—.

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*Enrolment of the Bargain and Sale.*

The deed may be enrolled in any of the courts at Westminster; but enrolling it thus in Chancery is the readiest and least troublesome mode.

Take the Bargain and Sale to the Public Office, Southampton Buildings, and let one of the commissioners who executed it attend at the same time, and acknowledge it before a Master. The Master will thereupon write at the bottom or in the margin of the deed the acknowledgment, thus :

Taken and acknowledged by *A. B.* esquire, party hereto, at the Public Office, this — day of —, 1827, before  
James Stephen.

*If a commissioner cannot attend, an affidavit of the execution of the bargain and sale, made by one of the attesting witnesses, must be annexed to it, before it is laid before the Master. See Arch. Forms, 576.*

*Then take the deed to the clerk of the enrolments, who will have it engrossed on the rolls of the court, and return it to you.*

Pay for acknowledging.....	2	6
Or swearing affidavit .....	1	6
Enrolling for each roll, containing 90 lines, 14 words in each.....	10	0
Endorsing and certifying .....	5	4

*If a commissioner attends he is paid half-a-guinea, and if not then the solicitor charges for drawing and engrossing the affidavit.*

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*But if, instead of proceeding to the choice of assignees, the creditors shew to the commissioners a sufficient reason for postponing it, the commissioners will then subscribe the following*

*Memorandum of Adjournment of the choice of Assignees.*

*At the Court of Commissioners of Bankrupt,  
the 23d day of May, 1827.*

*Memorandum, That this being the day appointed, pursuant to notice in the London Gazette, for the choice of assignees under the commission of bankrupt awarded and issued and now in prosecution against Joseph Styles, of ——— street, London, builder, dealer and chapman, we whose names are hereunto subscribed, being the major part of the commissioners in and by the said commission named and authorized, met on the day and year and at the place above written, pursuant to such notice, to take the proofs of debts, and for the choice of assignees under the said commission ; but the creditors present, being desirous that the said choice of assignees should be adjourned, we do adjourn the same until Tuesday, the ——— day of ——— next, at this place, at eleven of the clock in the forenoon of the same day.*

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*In which case the solicitor must have inserted in the Gazette the following Advertisement of a Meeting for the choice of Assignees.*

*The commissioners, in a commission of bankrupt awarded and issued forth against Joseph Styles, of ——— street, in the city of*

*London, builder, dealer and chapman, intend to meet on the — day of August instant, at eleven of the clock in the forenoon, at the Court of Commissioners of Bankrupt in London, in order to proceed to the choice of an assignee or assignees of the estate and effects of the said bankrupt; when and where the creditors, who have not already proved their debts, are to come prepared to prove the same, and, with those who have already proved their debts, vote in such choice accordingly.*

*\* \* At which time the creditors will proceed to the choice of assignees, in the manner above directed.*

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*Solicitor's Bill.*

*This you had better write upon brief paper, so as to be filed along with the proceedings. When taxed, write the following order at the foot of it, and get it signed by the commissioners. For form of the bill see post. sec. 11.*

*At the Court of Commissioners of Bankrupt,  
23d May, 1827.*

*We whose names are hereunto subscribed, being the major part of the commissioners named and authorized in and by a commission of bankrupt, awarded and issued and now in prosecution against Joseph Styles, of — street, in the city of London, builder, dealer and chapman, having inspected the above bill of charges and disbursements, do tax and ascertain the same at the sum of —; and we do hereby direct and order James Galbraith and Christopher Jameson, the assignees of the estate and effects of the said bankrupt, to pay the said sum of — out of the first monies or effects of the said bankrupt, that shall be got in or received under the said commission. Witness our hands, the day and year, and at the place above-mentioned.*

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*Messenger's Bill.*

*When taxed, write at the foot of it the same memorandum of taxation and order, as at the foot of the solicitor's bill, supra, and get it signed by the commissioners. For form of the bill see post. sec. 11.*

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*And next, if the bankrupt have appeared, (as he should do,) having surrendered at the previous meeting, fill up and get the commissioners to sign the following*

*Memorandum of the Bankrupt's Appearance.*

At the Court of Commissioners of Bankrupt,  
the 23d day of May, 1827.

Memorandum, That *Joseph Styles, late of——street, in the city of London, builder, dealer and chapman*, the person against whom this commission of bankrupt hath been awarded and issued forth, being sworn and examined before the major part of the commissioners in the said commission named and authorized, on the day and year and at the place abovesaid, pursuant to notice in the London Gazette for that purpose, appeared again before the major part of the said commissioners, and submitted himself to be from time to time examined touching the disclosure and discovery of his estate and effects, and in all things to conform himself according to the directions of the statute made and now in force concerning bankrupts, and to have the benefit thereof; but not being prepared to make a full disclosure and discovery of his estate and effects, prays further time for the doing thereof which is granted accordingly.

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*If you wish to summons any witness for the next meeting, fill up your summonses for that purpose, and get them now signed by the commissioners. See the form ante. p. 16.*

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*And lastly, having had all the proceedings signed by the commissioners, tack them in their order with the proceedings of the former meetings; and, in London commissions, make a short note for the registrar, of the particulars required to be registered at his office (see i. p. 3.), and pay him 11s.*

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### THIRD PUBLIC MEETING.

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*The solicitor will provide himself with such of the following forms as he may think will be required. He must also be provided with depositions for creditors to prove their debts, as directed ante p. 29.*

*Also, if the bankrupt surrender for the first time at this meeting, his surrender must be taken as directed ante p. 25, &c.*

*The business peculiar to this meeting, however, is, the final examination of the bankrupt and the allowance of his certificate. As it may be necessary, however, in cases where the conduct of the bankrupt is involved in doubt or suspicion, to examine witnesses in order to ascertain whether there have been any concealment of effects, and as to other particulars, before the commissioners are so satisfied as to his conformity as to sign his certificate, or will allow him to pass his final examination; an examination of such witnesses may constitute a part, and a material part, of the proceedings at this and subsequent meetings, before the bankrupt is allowed to pass his final examination, or the commissioners sign his certificate of conformity. We shall therefore treat of the matter of this section under the four following heads :*

- 1. The Bankrupt's final Examination.*
  - 2. Other Examinations of the Bankrupt.*
  - 3. Examination of Witnesses.*
  - 4. The Certificate.*
- 

#### *1. The Bankrupt's final Examination.*

*When the bankrupt is in custody, the assignees must appoint some person to attend him, with his books, papers and writings, to enable him to prepare his examination, a copy of which the bankrupt must deliver to his assignees, or their order, upon their application, at least ten days before his examination.*

*When the bankrupt appears, he is sworn, (see the form of the oath, ante, p. 15,) and the commissioners put such questions to him as will lead to a full disclosure of his estate and effects, and the manner in which he has disposed of them. As all this, how-*

over, is comprised in the *Memorandum and Schedules* following, the commissioners, in ordinary cases, will be satisfied with the bankrupt's swearing to the truth of these; but when any thing like fraud appears, or is suspected, the bankrupt is subjected to a severe examination, by the commissioners, and frequently by counsel upon the part of the assignees or of some particular creditor. After he has undergone his examination, fill up the following *Memorandum, Balance Sheet and Schedules*; get them subscribed by the bankrupt, and signed in the margin by the commissioners.

*Memorandum of the last Examination.*

At the Court of Commissioners of Bankrupt,  
the 13th day of May, 1827.

*Memorandum, That Joseph Styles.* the person against whom this commission of bankrupt is awarded and issued, being come before the major part of the commissioners in and by the said commission named and authorized, in order to make a full and true discovery and disclosure of his estate and effects, and to finish his examination, pursuant to notice in the *London Gazette* for that purpose given, and being sworn and examined on the day and year and at the place above mentioned, upon his oath saith, that the several books which are now produced and delivered up by this examinant, and severally marked with the letters A, B, &c., together with the goods and things seized by and under the said commission, and the books, papers and writings, securities for monies, goods and effects, delivered up by this examinant to the assignees chosen under the said commission, together also with *four pounds seventeen shillings in money, and a silver watch and gold key*, do contain and are a full and true disclosure and discovery of all this examinant's estate and effects, both real and personal, and how and in what manner, to whom and upon what consideration, and at what time or times, he has disposed of, assigned or transferred any of his goods, wares, merchandizes, monies, or other estate or effects, and all books, papers and writings relating thereto, or of which he was possessed, or in or to which he was any wise interested or entitled, or which any person or persons had or hath or have had in trust for him or for his use, at any time before or after the issuing of the said commission, or whereby this examinant and his family have or may have or expect any profit, possibility of profit, benefit or advantage whatsoever, (except only such parts of his estate and effects as have really and *bona fide* been before sold or disposed of in the way



of his trade and dealings, and except such sums of money as have been laid out in the ordinary expenses of himself and family.) And this examinant further saith, that at the time of this his examination, he hath delivered up to the said commissioners in the said commission named, or the major part of them, or unto the assignees chosen under the said commission, all such part of his goods, wares and merchandize, money, estates and effects, and all books, papers and writings relating thereto, as are now in his custody, possession or power, (the necessary wearing apparel of this examinant, his wife and children, only excepted.) And this examinant further saith, that he hath not removed, concealed or embezzled any part of his estate, real or personal, nor any books of account, papers or writings relating thereto, with an intent to defraud his creditors.

*Joseph Styles.*

Memorandum, The above-mentioned *four pounds seventeen shillings, silver watch and gold key*, were, by the consent of the creditors, returned to the bankrupt.

*If the bankrupt is a foreigner and it is necessary to have an interpreter, he must be sworn to the following deposition:*

At the Court, &c.

Francisco Bernales, of &c. being sworn and examined on the day and year and at the place above mentioned, before the major part of the commissioners named and authorised in and by a commission of bankrupt awarded and issued and now in prosecution against *Antonio Costello, of——street, in the city of London, merchant, dealer and chapman*, upon his oath saith, that he hath faithfully and truly, according to the best of this examinant's skill and knowledge, interpreted the oath administered by the said commissioners to the said bankrupt, and this examinant further saith that he hath faithfully and truly according to the best of this examinant's skill and knowledge, interpreted to the said bankrupt his last examination hereunto annexed.

*Bankrupt's Balance Sheet.*

*Third Public Meeting.*

73

Bankrupt.	Dr.	£	s.	d.	Cr.	£	s.	d.
Debts (as per List, marked D. post, p. 74.)		3074	12	8	Debts due (See List C. post, p. 75.)	1296	9	1
Capital	- . . -	1600	0	0	Property (exclusive of Debts) taken or to be taken by the Assignees, (See List P. post, p. 76.)	2225	0	0
Profits	- . . -	4107	16	5	Losses (See List L. post, p. 77.)	295	0	0
					Expenses (See List E. post, p. 77.)	4966	0	0
		8782	9	1		8782	9	1

DD

D.

*Schedule of Debts due by the Bankrupt.*

Debtors' Names.	Residence.	£	s.	d.
James Windham . . .	— street, London . . .	20	0	0
Charles Jameson . . .	York . . .	30	0	0
George Brook and James Ward	Parliament street, Westminster	40	0	0
Andrew Dundas . . .	Glasgow, Scotland . . .	50	0	0
James Slater and John Slater	Wakefield . . .	2934	12	8
		3074	12	8

C.

*Debts due to the Bankrupt.*

Debtors' Names.	Residence.	Amount.			Money Stock.	Good.	Bad.	Doubtful.
		£	s.	d.				
David Lawson.	34, Regent-street.	1300	0	0	£470 0 0	Good.	Bad.	Doubtful.
Richard Davis.	Hampstead.	400	0	0				
George Copeland.	Hammersmith.	66	9	1				
		1766	9		470 0 0			
		470	0	0				
		1296	9	1				

P. Schedule of the Bankrupt's other Property.

*Property, exclusive of Debts, taken or to be taken by the Assignees.*

	£	s.	d.
Stock in Trade, valued at cost prices - - - - -	1430	0	0
Leasehold house in ——— street, London, lately in the occupation of the bankrupt	750	0	0
House and 10 acres of land at Hendon, in the county of Middlesex, in fee simple, let to and now in the occupation of James Trant as tenant thereof, at a rent of £45 per annum - - - - -	1300	0	0
	<u>2050</u>	0	0
Deduct amount of mortgages on the above property, granted to			
Mr. Southwell - - - - -	- £400	0	0
Mr. Lane - - - - -	- 350	0	0
Mr. Elsdon - - - - -	- 505	0	0
	<u>1255</u>	0	0
	<u>2225</u>	0	0

*Schedule of Losses and Expenses.*

L.

E.

Losses.	£	s.	d.	Expenses.	£	s.	d.
Lost by the bankruptcy of James Bird and Co. - - - -	160	0	0	Ground-rent, £33 per annum, for 13 years - - - -	429	0	0
Law Expenses paid Mr. Hill of the Temple - - - -	40	3	7	Taxes for 13 years, viz. King's taxes - - £24 0 0 Rates, &c. - - 25 0 0			
Lost by being surety for John Long-staff - - - -	94	16	5	House expenses for 13 years, for self, wife, and 6 children, clothing, schooling, doctor's bill, &c. at £300 per annum - - -	637	0	0
	295	0	0		3900	0	0
					4966	0	0

*If there be not time enough at the third public meeting to finish the bankrupt's final examination, or if from circumstances the commissioners be satisfied that the bankrupt could not so soon be prepared for it, or if it be necessary to have further evidence as to his conduct or disposal of his effects, &c. the commissioners may adjourn the final examination to a future day; in which case the solicitor must fill up the following memorandum and get it signed by the commissioners, must indorse a memorandum to the like effect on the bankrupt's summons and get it signed in like manner, and must have an advertisement thereof inserted in the Gazette.*

*Memorandum of Adjournment of Bankrupt's last Examination,*

At the Court of Commissioners of Bankrupt,  
the 13th day of May, 1827.

Memorandum, That this being the day appointed pursuant to notice in the London Gazette, for *Joseph Styles*, the person against whom the commission of bankrupt now in prosecution is awarded and issued, to surrender himself, and make a full disclosure and discovery of his estate and effects, and to finish his examination under the said commission, we whose names are hereunto subscribed, being the major part of the commissioners in the said commission named, met on the day and year and at the place above-mentioned, pursuant to such notice; at which time the said bankrupt appeared and submitted himself, and was examined by us touching his estate and effects; but [*the said bankrupt not being able satisfactorily to answer all such questions as we have put to him, touching his estate and effects, without a further investigation of his books and papers,*] [or stating any other reasons the commissioners may have for the adjournment] “*we do therefore adjourn the said bankrupt's last examination until the — day of —, at this place, at — o'clock in the forenoon of the said day.*”

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*Memorandum to be Indorsed on the Bankrupt's Summons.*

At the Court of Commissioners of Bankrupt,  
the 13th day of May, 1827.

Be it remembered, That the within named *Joseph Styles*, on the day and year and at the place above mentioned, (being the time and place appointed pursuant to notice in the London Gazette for the said *Joseph Styles* to surrender himself, and to

make a full disclosure and discovery of his estate and effects, and to finish his examination under the commission of bankrupt now in prosecution against him,) appeared before us, and submitted himself," [*&c. as in the last form, to the end;*] "until which day, time is granted unto the said bankrupt, for the purpose aforesaid, at the place above mentioned, by us.

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*Advertisement of the Adjournment in the Gazette.*

The commissioners in a commission of bankrupt awarded and issued forth against Joseph Styles, of — street, in the city of London, brewer, dealer and chapman, intend to meet on the 20th day of September instant, at eleven o'clock in the forenoon, at the Court of Commissioners of Bankrupt, London, (by adjournment from the 13th instant,) in order to take the last examination of the said bankrupt, when and where he is required to surrender himself, and make a full discovery and disclosure of his estate and effects, and finish his examination; and the creditors, who have not already proved their debts, are to come prepared to prove the same, and, with those who have proved their debts, are to assent to or dissent from the allowance of his certificate.

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*If he be in custody, you must get the Commissioners to sign the following*

*Warrant to bring up the Bankrupt.*

Whereas a commission of bankrupt hath been awarded and issued against Joseph Styles, of — street, in the city of London, builder, dealer and chapman, directed to us, whose names are hereunto subscribed, and to the other commissioners in the said commission named; and he being declared bankrupt on the — day of — last; and we being informed that the said Joseph Styles is in your custody [upon mesne process and not in execution," or "in execution:] these are therefore to desire you to bring the body of the said Joseph Styles before us at the Court of Commissioners of Bankrupt in the city of London, on — next, the — day of — instant, (being the day appointed in the London Gazette for the said bankrupt to finish his examination,) at — o'clock in the afternoon, in order to undergo his last examination, pursuant to an act of parliament made and now in force concerning bankrupts, intituled "An



act to amend the laws relating to bankrupts ;" and this shall be your sufficient warrant. Given under our hands this — day of — 1827.

To [*the officer in whose custody the bankrupt is, as*] " To William Jones, Esq., marshal of the King's bench prison, or his deputy there ;" " William Robert Henry Brown, Esq., warden of the Fleet prison, or his deputy there ;" " A. B. Esq., sheriff of the county of N, or A. S. gaoler of the common gaol for the said county at — or his deputy there ;" *or the like.*

\* \* *The officer is paid 10s. 6d.*

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*If, however, instead of submitting to be examined, the bankrupt refuse either to be sworn, or to answer any of the questions put to him, or to sign and subscribe his examination, or if he do not answer satisfactorily, the commissioners may commit him to such prison as they think fit. The following may be the form of commitment in such cases :*

*Warrant of Commitment of Bankrupt, for refusing to answer, &c.*

At the Court of Commissioners of Bankrupt,  
the 13th day of September, 1826.

Whereas his Majesty's commission under the great seal of Great Britain, grounded upon the statute made and now in force concerning bankrupts, bearing date at Westminster, the — day of — in the — year of the reign of his present Majesty, was on the day of the date thereof aforesaid awarded and issued against Joseph Styles of — street, in the city of London, builder, dealer and chapman, directed to —, or any four or three of them, and is now in full force and effect. And whereas the said commissioners in the said commission named, or the major part of them, having first respectively taken the oath appointed by an act of parliament made in the sixth year of the reign of his present Majesty, intituled " An act to amend the laws relating to bankrupts," for commissioners of bankrupts to take, before they act as commissioners in the execution of the powers or authorities given by the said act, and having begun to put the said commission into execution, upon due examination of witnesses and other good proofs upon oath before them had and taken, did find that the said Joseph Styles, before the date and suing out of the said commission, did become

bankrupt, within the true intent and meaning of the said statute, and did adjudge and declare the said Joseph Styles a bankrupt accordingly. And whereas the major part of the said commissioners did cause notice to be given in the London Gazette of the — day of — last past, that the said Joseph Styles was thereby required to surrender himself to the said commissioners in the said commission named or the major part of them, on the 16th and 23d days of August last past, and the 13th day of September, in the year aforesaid, at eleven of the clock in the forenoon on each of the said days, at the Court of Commissioners of Bankrupt, Basinghall Street, in the city of London, and make a full disclosure and discovery of his estate and effects, and did also cause a summons or notice in writing to the like effect to be served upon the said Joseph Styles. And whereas the said Joseph Styles did, on the said 16th day of August, surrender himself to the major part of the commissioners in the said commission named and authorized, but, being sworn and examined, said that he was not then prepared to make a full disclosure and discovery of his estate and effects, and prayed time for the doing thereof, until the then next meeting, which was granted to him accordingly. And whereas the said Joseph Styles did, on the said 23d day of August, being the then next meeting, again surrender himself to the major part of the commissioners in the said commission named and authorized, and being again sworn and examined, said that he was not then prepared to make a full disclosure and discovery of his estate and effects, and prayed further time for the doing thereof until the then next meeting, which was granted to him accordingly. \*And whereas the said Joseph Styles did, on this 13th day of September, being the next meeting aforesaid, again surrender himself to us the major part of the said commissioners in the said commission named and authorized, in order to finish his examination, and to make a full disclosure and discovery of his estate and effects, and being then and there duly sworn and required by us to make such discovery and disclosure; and we, the said commissioners, (having before we proceeded to act under and by virtue of the said commission taken the oath aforesaid,) did cause the following question to be propounded to him the said Joseph Styles, that is to say:” [*here state the question*]: “ to which question, so put by us as aforesaid, the said Joseph Styles refused to give [any answer,” or, “ any other than the following answer, that is to say:” *stating the answer*: “ which answer of the said Joseph Styles not being satisfactory to us the said commissioners]: These are therefore to will, require, and authorize you, immediately upon receipt hereof, to take into your custody the body of the said Joseph Styles, and him safe-

ly convey to his Majesty's prison of Newgate, and him there to deliver to the keeper of the said prison, who is hereby required and authorized, by virtue of the commission and statute aforesaid, to receive the said Joseph Styles into his custody, and him safely to keep and detain without bail, until such time as he shall submit to us the said commissioners, or the major part of the commissioners in the said commission named and authorized, and full answer make, to our or their satisfaction, to the questions so put to him by us as aforesaid; and for so doing, this shall be your sufficient warrant. Given under our hands and seals, at the Court of Commissioners of Bankrupts, London, this 13th day of September, in the year of our Lord 1825.

To ———, our messenger, or ———  
 ———, his assistant, and to ———,  
 keeper of his Majesty's prison of New-  
 gate, or to his deputy there. }

\*.\* *To be signed and sealed by the commissioners, and given to the messenger, who will thereupon take the bankrupt into custody, and convey him to the prison mentioned in the warrant.*

*The above form may be varied as occasion may require. See 1 ch. 1. s. 10. ante & p. 87. post.*

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*If the bankrupt do not attend at his third public meeting, but some person for him deliver to the commissioners an order of the Lord Chancellor, previously obtained, enlarging the time for his surrender and examination, the solicitor must fill up the following memorandum thereof and get it signed by the commissioners, and must have an advertisement to the same effect inserted in the Gazette. The Lord Chancellor's order is kept, and filed with the proceedings. See 1. ch. 1. sec. 10. ante.*

*Memorandum of the time for surrendering being enlarged.*

At the Court of Commissioners of Bankrupt,  
 the 13th day of September, 1825.

Memorandum, that this being the day appointed, pursuant to notice in the London Gazette, for Joseph Styles, the person against whom the commission of bankrupt now in prosecution is awarded and issued, to surrender himself, and make a full disclosure and discovery of his estate and effects, and to finish his examination under the said commission: We, whose names

are hereunto subscribed, being the major part of the commissioners in the said commission named, met on the day and year and at the place above mentioned, pursuant to such notice ; at which time a petition from the said bankrupt" [or " from the assignees of the said bankrupt,] in his behalf, preferred to the Right Honourable the Lord High Chancellor of Great Britain, praying that the said bankrupt's time for surrendering himself, and making a full disclosure and discovery of his estate and effects, and to finish his examination, might be enlarged for the space of —— days, to be computed from this 13th day of September instant, with his Lordship's order thereon for that purpose, bearing date the —— day of —— last past, was produced to" [or " served upon] us the said commissioners ; we do therefore defer taking such examination till the said —— day of —— next, and we do hereby accordingly adjourn to that day, at this place, at eleven o'clock in the forenoon of the said day, for that purpose.

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*Advertisement thereof.*

Pursuant to an order of the Lord High Chancellor of Great Britain, for enlarging the time for Joseph Styles, of —— street, in the city of London, builder, dealer and chapman, a bankrupt, to surrender himself, and make a full discovery and disclosure of his estate and effects for —— days, to be computed from the 13th day of September instant : this is to give notice, that the commissioners in the said commission named and authorized, or the major part of them, intend to meet on the —— day of —— next, at eleven o'clock in the forenoon, at the Court of Commissioners of Bankrupt, Basinghall-Street, in the city of London, when and where the said bankrupt is required to surrender himself between the hours of eleven and one of the same day, and make a full discovery and disclosure of his estate and effects, and finish his examination ; and the creditors who have not already proved their debts, may then and there come and prove the same, and, with those who have proved their debts, are to assent to or dissent from the allowance of his certificate.

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*If however the bankrupt neither attend at this third public meeting, nor offer any sufficient excuse for his absence, a deposition is then made of the service of the summons, and a memorandum made and signed of his non-appearance, as preliminary to criminal pro-*

*ceedings against him for not appearing. See 1. ch. i. sec. 10. ante. The commissioners also may grant a warrant to take him and bring him before them. See 1. ch. i. sec. 11, ante. The following are the forms:*

*Deposition of the Service of Bankrupt's Summons.*

At the Court of Commissioners of Bankrupt,  
the 20th day of September, 1825.

William Burwood, of Southampton Buildings, Chancery Lane, London, one of the messengers of the commissioners of bankrupt, being sworn and examined the day and year and at the place aforesaid; upon his oath saith that he this examinant did, on the — day of — last past, serve Joseph Styles, the person against whom the commission of bankrupt now in prosecution is awarded and issued, with the notice or summons hereinafter mentioned, by delivering the same to and leaving it with a female servant of the said Joseph Styles at his dwelling house and usual place of abode in — street, in the city of London; which said notice or summons was, in this examinant's presence, subscribed by A. B. C. D. and E. F., esquires, the major part of the commissioners in the said commission named, with the names of the said commissioners respectively, and was in the terms following, that is to say: "To Joseph Styles. Whereas a commission of bankrupt," [*&c. so copying the summons to the end.*]

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*Memorandum of his non-appearance.*

At the Court of Commissioners of Bankrupt,  
the 13th day of September, 1825.

Memorandum, That this being the day appointed, pursuant to notice in the London Gazette, for Joseph Styles, the person against whom the commission of bankrupt now in prosecution is awarded and issued, to surrender himself, and make a full disclosure and discovery of his estate and effects, and to finish his examination under the said commission, we whose names are hereunto subscribed, being the major part of the commissioners in the said commission named, met on the day and year, and at the place above mentioned, pursuant to such notice; at which time and place the said Joseph Styles did not surrender himself, according to an act of parliament made in the sixth year of the reign of his present majesty, intituled, "An act to amend the laws relating to bankrupts," although we attended at the place

above mentioned, in expectation of such surrender, till past three o'clock in the afternoon of the same day, and although due notice in writing, requiring him to surrender on the day and at the place above mentioned, had been left for him at his usual place of abode.

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*Warrant to apprehend the Bankrupt.*

*Same as the form ante, p. 80, to the asterisk \*, and then thus.]*  
 “ And whereas, on this 13th day of September, being the next meeting aforesaid, we whose names are hereunto subscribed, being the major part of the commissioners in the said commission named and authorized, met at the place above mentioned, pursuant to the notice aforesaid; at which time and place the said Joseph Styles did not surrender himself, according to an act of parliament made in the sixth year of his present majesty, intituled, “ An act to amend the laws relating to bankrupts,” the said Joseph Styles having no lawful impediment made known to us at the time or allowed by us, although we attended at the place above mentioned, in expectation of such surrender, until past three o'clock in the afternoon of the same day: These are therefore to will, require, and authorize you, and every of you, to whom this our warrant is directed, immediately upon receipt hereof, to arrest the said Joseph Styles by his body, and bring him before us, or before the major part of the commissioners in the said commission named, at the Court of Commissioners of Bankrupt, on — the — day of — instant, in order to surrender himself, and make a full disclosure and discovery of his estate and effects, and to finish his examination under the said commission; and for your so doing, this shall be your sufficient warrant. Given under our hands and seals, this — day of — 1825.

To — — our messenger, }  
 and to — — his assistant. }

\* \* *To be signed and sealed by the commissioners, and given to the messenger, who will thereupon arrest the bankrupt, and bring him before them on the day appointed.*

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## 2. Other Examinations of the Bankrupt.

*Besides what is termed the final examination, the commissioners may call the bankrupt before them, at any time before or after such examination, or even after he has obtained his certificate, for the purpose of examining him as to his trade, dealings, or estate. See ante 1. Ch. 1. sec. 11. For this purpose the commissioners first issue their*

### *Summons.*

*This may be the same in form as the summons for a witness, ante, p. 16, but instead of saying that the commission was "awarded against Samuel Styles," &c., say "awarded against you."*

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*If the bankrupt be in custody, you must get the commissioners to sign the following*

### *Warrant to bring up the bankrupt.*

*Same as the form ante, p. 79, to the words] city of London, on — next, the — day of instant, at — o'clock in the afternoon, in order to his being examined by us, pursuant to an act of parliament," [&c. as ante, p. 79, to the end.*

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*If the bankrupt appear at the time and place appointed by the summons, and submit to be examined, he is then sworn (see the form of the oath, ante, p. 15), and the solicitor reduces to writing his deposition, which he subscribes; and it is signed in the margin by the commissioners. The deposition may be in this form:*

### *Deposition.*

*At the Court of Commissioners of Bankrupt,  
the 20th day of September, 1826.*

*Joseph Styles, late of — street, in the city of London, builder, dealer and chapman, but now of —, in the same city, the person against whom the commission of bankrupt now in prosecution is awarded and issued, being sworn and examined before the major part of the commissioners named and authorized in and by the said commission, upon his oath saith that," &c.*

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*If, however, instead of submitting to be examined, the bankrupt refuse either to be sworn, or to answer any of the questions put to him, or to sign or subscribe his examination, or if he do not answer satisfactorily, the commissioners may then commit him to such prison as they think fit. See Ante, I Ch. 1. sec. 11. &c. The following may be the form of commitment in such cases :*

*Warrant of Commitment.*

*Same as the form ante, 80, to the words] did adjudge and declare the said Joseph Styles a bankrupt accordingly. And the said Joseph Styles afterwards, on the day and year and at the place above-mentioned, being present at a meeting of us whose names are hereunto subscribed, being the major part of the commissioners in the said commission named and authorized, we proceeded to examine him touching matters relating to his trade, dealings, and estate ; and the said Joseph Styles being then and there duly sworn, and required by us to make true answers to all such questions as should be put to him, We the said commissioners (having, before we proceeded to act under and by virtue of the said commission, taken the oath aforesaid) did cause the following question to be propounded to him the said Joseph Styles, that is to say," [here state the question.] " To which question," [&c. as in the form ante, p. 81, to the end.]*

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*But if the bankrupt have obtained an order of the Lord Chancellor for enlarging the time for his surrender, then the warrant is the same as the form p. 80, to the words] " notice, &c. to be served upon the said Joseph Styles."*

*And whereas the said Joseph Styles, before the said 13th day of September last, caused the major part of the commissioners in the said commission named and authorized to be duly served with an order of the Right Honourable the Lord High Chancellor of Great Britain, dated the — day of —, for enlarging the time of the said Joseph Styles surrendering himself, and disclosing and discovering his estate, and finishing his examination, for the space of 49 days, to be computed from the said 13th day of September. And whereas the said Joseph Styles attended us on this day and surrendered himself, in pursuance of the said order, in order to finish his examination, and to make a full disclosure and discovery of his estate and effects, and being then and there duly sworn, &c. as in the form, p. 81.*

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*And if the commitment is upon an adjourned examination, the warrant is the same as p. 80, to the surrender of the bankrupt; then as follows:*

And being then and there duly sworn and required by us, the major part of the said commissioners, to make such disclosure and discovery, he the said Joseph Styles was not able to give full and satisfactory answers to the several questions then and there put to him by us the major part of the said commissioners, touching his estate and effects; and thereupon, at the request of the creditors of the said Joseph Styles then and there present, and also at the request of the said Joseph Styles, the major part of the said commissioners did adjourn the last examination of the said Joseph Styles until this day, at eleven o'clock in the forenoon, at the Court of Commissioners of Bankrupt, Basinghall-Street. And whereas the said Joseph Styles attended us at the Guildhall aforesaid on this day, in pursuance of the said adjournment, in order to finish his examination and to make a full disclosure and discovery of his estate and effects, and being then and there duly sworn, &c. *as in form, p. 80.*

*Or the form may be otherwise varied to suit the circumstances of the case. See Ch. 1. sec. 11. ante.*

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*But if the bankrupt do not attend according to the summons, the commissioners then, after deposition made of the service of the summons, and (it should seem) a memorandum made and signed of his non-attendance, may grant a warrant to take him and bring him before them. See 1 Ch. i. sec. 11. ante. The following may be the forms:*

*Deposition of the Service of the Summons.*

At the Court of Commissioners of Bankrupt,  
the 20th day of September, 1826.

William Burwood, of Southampton Buildings, Chancery Lane. London, one of the messengers of the Commissioners of Bankrupt, being sworn and examined the day and year and at the place aforesaid, upon his oath saith, that he this examinant did, on the — day of — last past, serve Joseph Styles, the person against whom the commission of bankrupt now in prosecution is awarded and issued, with a true copy of the summons hereunto annexed, by delivering the same to and leaving it with a female servant of the said Joseph Styles, at his dwelling-house and usual place of abode in — street, in the city of London, and at the same time shewed her the original sum-

mons hereunto annexed. And this examinant further saith, that he hath since seen the said female servant, who informed this examinant that she had delivered the said copy to the said Joseph Styles, which information this examinant believes to be true.

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*Memorandum of his Non-attendance.*

At the Court of Commissioners of Bankrupt,  
the 20th day of September, 1826.

Memorandum, That on the — day of — instant, by virtue of the King's Majesty's commission under the great seal of Great Britain, grounded upon the statute made and now in force concerning bankrupts, awarded against Joseph Styles, of — street, in the city of London, builder, dealer and chapman, the major part of the commissioners therein named directed their summons, with their names thereunto subscribed, to the said Joseph Styles, thereby willing and requiring him personally to be and appear before the major part of the said commissioners, on the day and year and at the place first above mentioned, at the hour of — o'clock in the forenoon of the same day, to be examined by the major part of the said commissioners, by virtue of the said commission, and of the statute therein mentioned; which said summons afterwards, on the — day of — instant, was, as hath been proved to us, duly served upon the said Joseph Styles. And this being the day so appointed by the said summons for the said Joseph Styles personally to appear before the major part of the commissioners aforesaid, for the purpose aforesaid, we whose names are hereunto subscribed, being the major part of the said commissioners aforesaid, met on the day and year and at the place above mentioned, at the hour of — o'clock in the forenoon of the same day, for the purpose, amongst other things, of examining the said Joseph Styles; and although we there attended from thence until — o'clock in the afternoon, in expectation of the said Joseph Styles appearing before us, for the purpose aforesaid, according to the exigency of the said summons, yet the said Joseph Styles (having no lawful impediment made known to or allowed by us) hath not appeared before us, as by the said summons he was required, but therein has wholly made default. Wherefore, by virtue of the commission aforesaid, and of the statute in such case made and provided, we have this day granted our warrant, under our hands and seals, bearing date the day and year and at the place first aforesaid, directed to — —, our messenger, and to — —, his assistant,

willing, requiring, and authorizing them, to arrest the said Joseph Styles by his body, and bring him before the major part of the commissioners in the said commission named, at the place above mentioned, on — the — day of — instant, in order to his being examined by them.

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*Warrant to apprehend him.*

Same as the form ante, p. 80, to the words] did adjudge and declare the said Joseph Styles a bankrupt accordingly. And whereas the major part of the commissioners in the said commission named, by their summons, dated the — day of — instant, and directed to the said Joseph Styles, did will and require the said Joseph Styles personally to be and appear before the major part of the commissioners so named in the said commission as aforesaid, on — the — day of — instant, at eleven o'clock in the forenoon of the same day, at the court of commissioners of bankrupt, to be examined by the said major part of the said commissioners, by virtue of the said commission and of the statute therein mentioned; and which said summons was afterwards, on the — day of — instant, as hath been proved to us upon oath, duly served upon the said Joseph Styles. And whereas we whose names are hereunto subscribed, being the major part of the commissioners in the said commission named, having duly taken the oath aforesaid, attended at the time and place in and by the said summons appointed, for the purpose (amongst other things) of examining the said Joseph Styles, and there continued to attend from thence until — o'clock in the afternoon of the same day, in expectation of the said Joseph Styles appearing before us, for the purpose aforesaid, according to the exigency of the said summons; yet the said Joseph Styles (having no lawful impediment, made known to or allowed by us,) hath not appeared before us, as by the said summons he was required, but therein has wholly made default. These are therefore to will, require and authorize you and every of you, to whom this our warrant is directed, immediately upon receipt hereof, to arrest the said Joseph Styles by his body, and bring him before the major part of the commissioners in the said commission named, at the Court of Commissioners of Bankrupt, on — the — day of — instant, in order to his being examined as aforesaid; and for your so doing, this shall be your sufficient warrant. Given under our hands and seals, this — day of — 1825.

To — — our messenger, }  
and to — — his assistant. }

\* \* To be signed and sealed by the commissioners, and given to the messenger, who will thereupon arrest the party, and bring him before the commissioners on the day appointed. See 1. ch. 1, sec. 11

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### 3. Examination of Witnesses.

#### Summons.

Same as the form ante, p. 16, *mutatis mutandis*; and if you wish the witness to produce any deeds, papers, books, &c. which he may have in his possession, add, after the words, "the statute therein mentioned," these or the like words, "and also that you bring with you and produce to the said major part of the commissioners, at the time and place aforesaid, [a certain indenture, dated " &c. "and made between" &c. "whereby" &c. describing the deed or other instrument, letters, papers, books, &c. that you desire him to produce], "and all other books, papers, deeds, and writings, and other documents whatsoever, in any manner relating to the said bankrupt, his trade, dealings, or estate. And hereof," &c.

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If the witness be in custody, however, you must make an affidavit of the fact, and that he can give material evidences touching the estate or affairs of the bankrupt; then engross a writ of habeas corpus upon plain parchment, and a præcipe for the office; take the writ and affidavit to a judge at chambers, and upon reading the affidavit, he will endorse his name upon the writ; get the writ signed and sealed in the usual way; and lastly leave the writ with the officer to whom it is directed, (paying or tendering to him at the same time his reasonable charges for bringing up the witness), and he will bring him before the commissioners, according to the exigency of the writ. See stat. 43 Geo. 3. c. 140. ante, 1. ch. i. sec. 12. The following are the forms:

*Affidavit for a Habeas Corpus to bring a witness up if in custody.*

In the King's Bench," or "Common Pleas.

T. L. of——, gentleman, solicitor to the commission hereinafter next mentioned, maketh oath and saith that on or about the —— day of—— last past, a certain commission of bankrupt

under the great seal of Great Britain issued against one Joseph Styles, of — street, in the city of London, builder, dealer, and chapman; under which the said Joseph Styles was duly declared a bankrupt. And this deponent further saith that one E. G., now a prisoner for debt in the King's Bench prison," or "the prison of the Fleet," or "the gaol for the county of —] can give material evidence touching the estate and affairs of the said bankrupt, as this deponent has been informed and verily believes, and this deponent thinks it material and necessary that the said E. G. should be examined touching the same before the major part of the commissioners in the said commission named.

Sworn at my chambers, in  
Serjeant's Inn, Chancery  
Lane, London, this —  
day of —, 1825. }

T. L.

\* \* *To be written on plain paper and sworn. If the party have not as yet been declared bankrupt, the affidavit must be altered accordingly.*

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*Præcipe for the Writ.*

London to wit: Habeas Corpus for E. G. to testify before the commissioners named in a commission of bankrupt against Joseph Styles, or the major part of them, touching the estate and effects of the said bankrupt, returnable on Tuesday the 13th September, 1825.

T. L. Solicitor to the Commission.

\* \* *To be written on plain paper.*

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*Writ of Habeas Corpus thereon.*

George the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to [the Marshal of the Marshalsea," or "the Warden of our prison of the Fleet," or "the Sheriff of Surrey," &c.] greeting: We command you that you have the body of E. G. detained in our prison under your custody, as it is said, under safe and secure conduct, before the commissioners named in a certain commission of bankrupt against Joseph Styles, or the major part of

them, at the Court of Commissioners of Bankrupt, on Tuesday the thirteenth day of September next, by — of the clock in the forenoon of the same day, then and there to testify the truth, according to his knowledge, touching the [estate and affairs] of the said bankrupt; and immediately after the said E. G. shall then and there have been examined before the said commissioners, that you return him to our said prison, under safe and secure conduct; and have you there this writ. Witness Charles Lord Tenterden," [or " Sir William Draper Best, Knight,] at Westminster, this — day of — in the — year of our reign.

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*If the witness appear at the time and place appointed by the summons, and submit to be examined, he is then sworn, (see the form of the oath, ante, p. 15, and the solicitor reduces to writing his deposition, which he subscribes, and it is signed in the margin by the commissioners. The deposition may be in this form :*

*Deposition.*

At the Court of Commissioners of Bankrupt,  
the 13th day of September, 1826.

James Johnson, of — street, in the city of London, maltster, being sworn and examined on the day and year, and at the place above mentioned, before the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued, and now in prosecution, against Joseph Styles, of — street, in the said city of London, builder, dealer and chapman, upon his oath saith that," &c.

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*The like by a Quaker.*

James Johnson, of — street, in the city of London, maltster, (being one of the people called Quakers), being examined on the day and year and at the place above mentioned, before the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued and now in prosecution against Joseph Styles, of — street, in the said city of London, builder, dealer and chapman, doth solemnly affirm that," &c.

*If, however, instead of submitting to be examined, the witness refuse to be sworn, or to answer any lawful question put to him by the commissioners, or to sign and subscribe his examination, or shall not answer fully to the commissioners' satisfaction, the commissioners may then commit him to such prison as they think fit. See ante 1, ch. i. sec. 12. The following may be the form of commitment in such cases :*

*Warrant of Commitment of a Witness for not answering, &c.*

At the Court of Commissioners of Bankrupt,  
the 13th day of September, 1825.

Whereas His Majesty's commission under the great seal of Great Britain, grounded upon the statute made and now in force concerning bankrupts, bearing date at Westminster the — day of — in the — year of his present Majesty, was on the day of the date thereof aforesaid awarded and issued against Joseph Styles, of — street, in the city of London, builder, dealer and chapman, directed to —, or any four or three of them, and is now in full force and effect. And whereas, We whose names are hereunto subscribed, being the major part of the commissioners in and by the said commission named and authorized, (having first respectively taken the oath appointed by an act of parliament made in the sixth year of the reign of his present Majesty, intituled, "An act to amend the laws relating to bankrupts," for commissioners of bankrupts to take, before they act as commissioners in the execution of the powers or authorities given by the said act, and having begun to put the said commission into execution,) afterwards, at a meeting under the said commission, holden on the day and year and at the place first above mentioned, James Johnson being present at the said meeting, we proceeded to examine him [touching a certain act of bankruptcy said to have been committed by the said Joseph Styles," *so stating the subject of the intended examination, as to bring it within the 34th section of stat. 6 Geo. 4. c. 16 ; see ante 1. ch. i. sec. 12.*] "And the said James Johnson being then and there duly sworn, and required by us to make true answers to all such questions as should be put to him, We the said commissioners did then and there cause the following question to be propounded to him the said James Johnson, that is to say : " *[here state the question,]* "To which question so put by us as aforesaid, the said James Johnson refused to give [any answer," or "any other than the following answer, that is to say : " *stating the answer :* "which answer of the said James Johnson not being satisfactory to us the said

commissioners]: These are therefore to will, require and authorise you" [*&c. as ante, p. 81, to the end.*]

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*But if the witness do not attend in obedience to the summons, the commissioners then, after deposition made of the service of the summons, and (it should seem) a memorandum made and signed of his non-attendance, may grant a warrant to take him and bring him before them. See ante 1, ch. i. sec. 12.*

*Deposition of the Service of the Summons.*

*Same as the form ante, p. 88, except that instead of "the person against whom the commission of bankrupt now in prosecution is awarded and issued, with a true copy of the summons hereunto annexed," you say, "the person to whom the summons hereunto annexed is directed, with a true copy of the said summons."*

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*Memorandum of his non-attendance.*

*Same as the form ante, p. 89.*

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*Warrant to apprehend him.*

*Same as the form, ante, p. 80, to the words] and having begun to put the said commission into execution, did, by their summons, dated the — day of — instant, and directed to James Johnson of —, will and require the said James Johnson personally to be and appear" [*&c. as in the form ante, p. 90, to the end.*]*

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## 4. The Certificate.

*The certificate cannot of course be signed by the commissioners, nor indeed by the creditors, until after the bankrupt has undergone his last examination. The bankrupt should have his certificate prepared, and should get some friend to apply to those creditors who have proved upon the estate, to sign it; and it may be as well also for such friend to attend the meeting at which the bankrupt is to undergo his last examination, for the purpose of making the like application to such of the creditors as may prove their debts on that day. If the certificate be not ready for the signature of the commissioners on the day the bankrupt passes his examination, the bankrupt will be at the expense of the meeting at which it is afterwards signed.*

*As soon as the certificate has been signed by the requisite number of creditors (see ante 1 Ch. i. sec. 13), and the bankrupt has passed his examination, the commissioners, if they think he has acted fairly, will also sign it. The following is the form of the certificate; blank forms of which may be had of the messengers.*

## Certificate.

To the Right Honourable the Lord High Chancellor of Great Britain.

We, whose names and seals are hereunto subscribed and set, being the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued against Joseph Styles, of — street, in the city of London, builder, dealer and chapman, bearing date at Westminster, the — day of — in the — year of the reign of his present Majesty, directed to —, do humbly certify to your lordship, that the major part of the commissioners in and by the said commission named and authorized, having begun to put the said commission into execution, did find that the said Joseph Styles became a bankrupt since the — day of — 18 , and before the date and suing forth of the said commission, within the true intent and meaning of the statute made and now in force concerning bankrupts, and did thereupon declare and adjudge him a bankrupt accordingly. And we further humbly certify to your lordship, that the said Joseph Styles being so declared bankrupt, the major part of the commissioners in and by the said commission named and authorized, pursuant to the directions of the act of parliament made in the sixth year of the

reign of his present Majesty, intituled " An Act to amend the laws relating to bankrupts," did cause due notice to be given and published in the London Gazette of such commission being issued, and of the times and place of three several meetings of the said commissioners within forty-two days next after such notice, (the last of which meetings was appointed to be on the forty-second day,) at which time the said Joseph Styles was required to surrender himself to the said commissioners in the said commission named, or the major part of them, and to make a full disclosure and discovery of his estate and effects, and the creditors of the said Joseph Styles were required to come prepared to prove their debts, and to assent or dissent from the making of this certificate. And we further humbly certify to your lordship, that such three several meetings of the major part of the commissioners by the said commission authorized, were had pursuant to such notice so given and published, and that at one of those meetings the said Joseph Styles did surrender himself to the major part of the said commissioners by the said commission authorized, and did sign and subscribe such surrender, and did submit to be examined from time to time upon oath by and before the major part of the said commissioners by the said commission authorized, and in all things to conform to the said act made in the sixth year of his present Majesty's reign. And we further humbly certify to your lordship, that [at the last of the said three meetings," or " on the — day of —, to which day the last of the said three meetings was adjourned] the said Joseph Styles finished his examination before the major part of the said commissioners by the said commission authorized, according to the directions of the said last mentioned act, and upon such his examination made a full disclosure and discovery of his estate and effects, and in all things conformed himself to the said act made in the sixth year of his present Majesty's reign, and now in force, concerning bankrupts ; and there doth not appear to us any reason to doubt of the truth or fulness of such discovery. And we further humbly certify to your lordship, that the creditors whose names [or marks] are subscribed to this certificate, are full four-fifths in number and value of the creditors of the said bankrupt, who have proved debts under the said commission to the amount of twenty pounds or upwards ; and that it doth appear to us, by due proof by affidavit in writing, that such several subscribing creditors, or some person by them respectively duly authorized thereunto, did, before our signing thereof, sign this certificate, and testifying their consent to our signing the same, and to the said Joseph Styles having such allowance and benefit as by the said last mentioned act are allowed to bankrupts, and to the said Joseph Styles being discharged from

E E

his debts, in pursuance of the same act. In witness whereof we have hereunto set our hands and seals, this —— day of ——, in the —— year of the reign of our Sovereign Lord George the Fourth, and in the year of our Lord 1825.

We, the creditors of the above named Joseph Styles, whose names [or marks] are hereunder subscribed, do hereby testify and declare our consent that the major part of the commissioners by the said commission authorized, may sign and seal the certificate above written; and that the said Joseph Styles may have such allowance and benefit as are given to bankrupts by the act of parliament made in the sixth year of the reign of his present Majesty, intituled "An Act to amend the laws relating to bankrupts," and be discharged from his debts in pursuance of the same act.

A. B. (L. S.)  
C. D. (L. S.)  
E. F. (L. S.)

Signed and Sealed by the above named commissioners, in the presence of

T. L. solicitor to the said commission.

James Windham, 27th September, 1826.

For Charles Jameson (by power of attorney in this behalf) John Franks, 1st October, 1826.

George Brook, for self and partner (James Ward) 1st October, 1826.

\* \* \* *To be signed and sealed by the commissioners, and their signature and sealing attested, either by the solicitor to the commission, or by a clerk to such solicitor, or by the messenger to the commission, or by some clerk to the commissioners. Ord. Eld. 8 Aug. 1809. By the same order, also, the creditors at the time of signing their consent, must write opposite their respective names the day of the month and year on which they sign the same. See i. p. 201.*

*The above form may be varied according to circumstances, so as to state the proceedings correctly.*

*Power of Attorney to sign the Certificate.*

Know all men by these presents, that I, Charles Jameson, of the city of York, innkeeper, one of the creditors of Joseph Styles, against whom a commission of bankrupt under the great seal of Great Britain hath been awarded and issued, and is now in prosecution, bearing date at Westminster the —— day of ——, one thousand eight hundred and twenty-five, having proved a debt of the amount of twenty pounds and upwards under the said commission as due to me from the said Joseph Styles, have made, constituted, and appointed, and by these presents do make, constitute, and appoint John Franks, of —— Street, in the city of London, merchant, my true and lawful attorney, for me and in my name, place, and stead, as such creditor as aforesaid, to sign the certificate of conformity of the said Joseph Styles, and thereby to testify and declare my consent that the major part of the commissioners, by the said commission authorized, may sign and seal the said certificate, and that the said Joseph Styles may have such allowance and benefit as are given to bankrupts by the act of parliament made in the sixth year of the reign of his present Majesty, intituled, “An Act to amend the laws relating to bankrupts,” and be discharged from his debts in pursuance of the said act; and further to act, do and perform all and whatsoever shall be needful and requisite to be done in, about and concerning the premises. And I do hereby ratify, confirm and allow all and whatsoever my said attorney shall lawfully do or cause to be done for me, by virtue of these presents, and of the power and authority hereby to him by me given. In witness whereof, I have hereunto set my hand and seal this —— day of ——, in the sixth year of the reign of our sovereign Lord George the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King Defender of the Faith, and in the year of our Lord one thousand eight hundred and twenty-five.

*Charles Jameson, (L.S.)*

Sealed and delivered }  
in the presence of }

J. T.

R. W.

\* \* See ante, p. 46, 47. If this power of attorney be executed abroad, it must be attested by a notary public, or by a British minister or consul. See 6 Geo. 4. c. 16. § 124, i. p. 200.

*Affidavit of the execution thereof.*

Same as the form ante, p. 47.

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*Affidavit of having seen the Creditors sign the Certificate.*

In the matter of *Joseph Styles*,  
a bankrupt.

*John Bett*, of — street, in the city of London, gentleman, maketh oath and saith, that he was present on the *twenty seventh* day of *September* last, and did see *James Windham*, and on the *first* day of *October* last, did see *John Franks* for *Charles Jameson*, by power of attorney in that behalf, and on the said *first* day of *October* did see *George Brook*, for himself and partner (*James Ward*), severally subscribe their names, and the day of the month and year on which they so subscribed their names, at the foot of a certain instrument in writing, purporting to be a certificate of the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued against the said *Joseph Styles*, that the said *Joseph Styles*, the bankrupt, had in all things conformed himself to the statute made and now in force concerning bankrupts; whereby they testify and declare their consent to the said commissioners' signing the said certificate; and that the said bankrupt may have such allowance and benefit as are given to bankrupts by the said act: and be discharged from his debts in pursuance of the same.

Sworn at the public office, in Southampton Buildings, Chancery Lane, in the County of Middlesex, this — day of — 1825, before me

*John Bett.*

Exhibited to us this — day of — 1825, under a commission of bankrupt against *Joseph Styles*.

\* \* \* To be signed from time to time, as made up, by the commissioners. See i. 202, ante.

**In the matter of *Joseph Styles,*  
*a bankrupt.***

*Joseph Styles, of — street, in the city of London, builder, dealer and chapman, against whom a commission of bankrupt hath been awarded and issued, maketh oath and saith, that the certificate, bearing date the — day of — 1825, under the hands and seals of A. B. C. D. & E. F. esquires, three of the commissioners in the said commission named, whereby they have certified to the right honourable the Lord High Chancellor of Great Britain, that he, this deponent, hath in all things conformed himself to the statute made and now in force concerning bankrupts, and the consent of all this deponent's creditors, who have signed their names [or marks] at the foot of the said certificate, that the said commissioners might sign the same, and that this deponent might have such allowance and benefit as are given to bankrupts by the said act, and be discharged from his debts in pursuance of the same, were obtained fairly and without fraud.*

Sworn at — the — }  
day of — 1825, before me }

**Joseph Styles.**

**At the Court of the Commissioners of Bankrupt,  
the 13th day of September, 1825.**

**Memorandum.** We, the major part of the commissioners named and authorized in and by a commission of bankrupt

awarded and issued against Joseph Styles, of — street, in the city of London, builder, dealer and chapman, met at the time and place above mentioned, and examined the proceedings under the said commission: and finding thereby, and by the affidavit exhibited before us, that full [four parts] in five in number and value of all the creditors who have proved their debts under the said commission, amounting respectively to twenty pounds or upwards, have signed their consent that the commissioners should execute a certificate to the right honourable the Lord Chancellor of Great Britain for the said bankrupt's discharge, according to the late act of parliament for that purpose, we the said commissioners accordingly executed such certificate.

\* \* *To be signed by the commissioners.* See i. p. 203.

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*When the certificate is signed by the creditors and commissioners leave it, together with the affidavit of the creditors having signed it, (supra,) and any powers of attorney to sign it that may have been given, with the secretary of bankrupts (pay him £1 : 17s.), who will thereupon give the messenger an authority to the printer of the Gazette to insert the following*

*Advertisement for the Allowance of the Certificate.*

Whereas the acting commissioners in a commission of bankrupt awarded and issued forth against Joseph Styles, of — street, in the city of London, builder, dealer and chapman, have certified to the right honourable the Lord High Chancellor of Great Britain, that the said Joseph Styles hath in all things conformed himself according to the directions of the act of parliament made and now in force concerning bankrupts—This is to give notice, that by virtue of an act passed in the sixth year of his present Majesty's reign, his certificate will be allowed and confirmed as the said act directs, unless cause be shewn to the contrary on or before the — day of — 1827.

*And if no cause be shewn, within the time here mentioned, which is twenty-one days from the date of the Gazette, the Lord Chancellor will allow the certificate, by the following subscription thereto :*

*Allowance thereof.*

23d day of June, 1827.

Whereas the usual notice hath been given in the London Gazette of — the — day of — last, and none of the credi-

tors of the above named Joseph Styles have shewn any cause to the contrary : I do allow and confirm this certificate.

Lyndhurst, C.

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*Discharge of Bankrupt, if in custody.*

If the bankrupt be in custody, take out a summons before a judge of the court where the action against him was commenced, calling upon the opposite attorney to shew cause why he should not be discharged ; and upon attending before the judge in the usual way, and producing the certificate, and an affidavit that the debt in question accrued before the bankruptcy, or otherwise shewing it to be barred by the certificate, he will make an order upon the gaoler or officer who has him in custody to discharge him. If the bankrupt be in custody upon mesne process, the order is that he shall be discharged upon filing common bail, or (in actions by original or in C. B.) entering a common appearance ; in which case you must first file common bail or enter an appearance for him in the usual way, get a certificate from the officer with whom you file or enter it, of your having done so, and annex it to the judge's order, before you deliver it to the gaoler, &c. See 1 Arch. Pr. B. R. 45. and ante, i. p. 210.

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## OTHER MEETINGS.

1. *Meeting of Creditors to consent to the Assignees commencing suits, &c.*

*If it be necessary or advisable for the assignees to commence a suit in equity, or to submit any matter in difference between them or the bankrupt and other persons to arbitration, or to compound any debts due to the bankrupt's estate, they must first call a meeting of the creditors and obtain the consent of the majority of the creditors who attend, to their doing so ; and twenty-one days notice of the meeting must be given by advertisement in the Gazette, and no suit in equity shall be commenced by the assignees without such consent ; provided that if one third in value or upwards of such creditors shall not attend any such meeting, whereof such notice shall have been given, the assignees shall have power with the consent of the commissioners, testified in writing under their hands, to do any of the matters aforesaid. See stat. 6 Geo. 4. c. 16. § 88, ante, ch. i. sec. 18, 5. The following are the forms :—*

*Advertisement thereof in the Gazette.*

The creditors who have proved their debts under a commission of bankrupt awarded and issued forth against Joseph Styles, of — street, in the city of London, builder, dealer and chapman, are desired to meet [the assignees of his estate and effects,] on the 15th day of November next, at eleven of the clock in the forenoon, at the Court of Commissioners of Bankrupt, Basinghall Street, in the city of London, in order to assent to or dissent from the said assignees compounding, settling and adjusting a certain debt due to the said bankrupt from one Charles Thompson, and to submit to the arbitration of A. L. Esquire, barrister at law, all matters in difference between the said bankrupt and one James Lambton, and to commence, and prosecute a suit in equity against one George Short, to foreclose a certain mortgage of the said bankrupt, in certain lands of the said George Short, or otherwise to obtain payment of the principal money and interest due upon the said mortgage, and on other special affairs.

*Memorandum thereof.*

At the Court of Commissioners of Bankrupt,  
the 15th day of November, 1826.

Be it remembered, that at a meeting of the creditors of Joseph Styles, of — street, in the city of London, builder, dealer and chapman, a bankrupt, pursuant to notice in the London Gazette for that purpose duly given, it is agreed by us whose hands are hereunto set, being the major part in value now present of one third value of all the creditors of the said Joseph Styles, who have proved their debts under the said commission, that the assignees of the estate and effects of the said Joseph Styles shall and may have full power and authority to compound, settle, and adjust a certain debt due to the said bankrupt from one Charles Thompson; and to submit to the arbitration of A. L. esquire, barrister at law, all matters in difference between the said bankrupt and one James Lambton; and to commence and prosecute a suit in equity against George Short to foreclose a certain mortgage of the said bankrupt upon certain lands of the said George Short, or otherwise to obtain payment of the money due for principal and interest on the said mortgage; and generally to do every lawful act and acts that they shall think necessary, or shall be advised, in and about the premises.

\* \* \* *It is improper to give a general power to the assignees to compound any debts, or submit to arbitration any matter or dispute, or institute any suit or suits, &c. as is sometimes done, for the statute does not give the meeting power to bind the absent creditors, except so far as the specific object mentioned in the advertisement for the meeting. The memorandum must be signed by the commissioners, and by the creditors, and be placed upon the file of proceedings.*

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*Consent of the Commissioners, where one third in value of the Creditors do not attend the meeting.*

Due notice was given in the London Gazette of the 21st of October last, for the creditors who had proved their debts under the commission of bankrupt, lately awarded and issued against Joseph Styles, of &c. to meet James Galbraith, of &c. and Chris-

topher Jameson, of &c. the assignees of the said bankrupt's estate and effects on the 15th day of November last, at seven o'clock in the forenoon, at &c. in order to assent to or dissent from the said assignees compounding and adjusting a certain debt owing to the estate of the said bankrupt by James Ward, of &c. [or submitting to arbitration all matters in difference between the said bankrupt's estate and James Ward, of &c.] and whereas one third in value of the creditors of the said Joseph Styles, did not attend at the time and place of meeting before mentioned; We, the major part of the commissioners in the said commission named, upon proof before us that the said assignees did duly attend at the time and place aforesaid, and that one third in value of the said creditors did not attend at the time and place aforesaid, do hereby testify our consent under our hands, that the said James Galbraith and Christopher Jameson, shall compound and adjust such debt, and commence and prosecute a suit in equity against the said James Ward in respect of such debt.

\* \* *To be signed by the commissioners.*



## *2. Sale of the Bankrupt's lands, &c. before the Commissioners.*

### *Advertisement thereof in the Gazette.*

To be sold, before the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued and now in prosecution against Joseph Styles, of — street, in the city of London, builder, dealer and chapman, at the Court of Commissioners of Bankrupt, London, on Thursday, the 17th day of November next, between the hours of one and three in the afternoon of the same day." [*Here state the particulars of the premises to be sold*]. "For further particulars enquire of T. L., No. —, Paper buildings, Temple, solicitor to the said commission. .



*On the day of sale, each of the commissioners being furnished with a particular and conditions of sale, they proceed in the manner usual in such cases before a master in chancery; a few minutes are*

*allowed for bidding on each lot; and whenever a person bids, he must sign his bidding, if required. 2 Cook, 183. When the sale is over, a memorandum thereof is signed by the Commissioners.*

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*3. Expunging proofs by the Commissioners.*

*By 6 Geo. IV. cap. 16. sect. 60. If the assignees, or two or more creditors having each proved a debt of 20l. or upwards, suspect a debt proved under the commission, or any part of it to be not justly due, the commissioners are empowered to investigate the same, and to expunge the proof or any part of it which in their opinion is not justly due, but the assignees or creditors who require such investigation, must first sign an undertaking to pay such costs as the commissioners shall adjudge to the creditor whose debt is to be so investigated.*

*Undertaking by Assignees or Creditors to pay the costs of investigating a debt by the Commissioners.*

At the Court of Commissioners of Bankrupt,  
the                      day of                      1827.

Whereas it appears to us the assignees chosen [or creditors having respectively proved debts to the amount of 20l. and upwards], under a commission of bankrupt against Joseph Styles of ——— street, in the city of London, builder, dealer, and chapman, that James Windham, of ——— street, in the city of London, merchant, hath proved a debt under the said commission, which is not justly due to the said James Windham, we therefore, having represented the same to the major part of the commissioners in the said commission named who have agreed to make an investigation upon oath into the validity of the said debt, hereby undertake and agree to pay such costs and charges as the said commissioners shall direct in respect of the said investigation.

Charles Jameson,  
George Brook.

*Memorandum of the Commissioners having expunged the proof of a debt.*

Memorandum, we whose names are hereunder written being the major part of the commissioners, named in and authorized by a commission of bankrupt awarded and issued against Joseph Styles, of ——— street, in the city of London, builder, dealer

and chapman, having been this day personally attended by Charles Jameson and George Brook, the assignees under the said commission, and also James Windham, of ———, a creditor who hath proved a debt under the said commission of 200*l.* for goods alleged to have been sold and delivered to the said Joseph Styles, by the said James Windham, before the date and issuing forth of the said commission, and having examined upon oath the said James Windham, and also John Nokes, of &c. and being of opinion that the said debt is not [or that only part of the said debt to the amount of 75*l.* is] justly due to the said James Windham, we have by virtue of the statute in that case made and provided, expunged the proof for the same [or part of the same to the amount of 75*l.*] from the proceedings under the said commission.

\* \* *To be signed by the Commissioners.*

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#### 4. *First Dividend.*

*At the meeting for the last examination of the bankrupt, the commissioners appoint a public meeting, not sooner than four months from the issuing of the commission, for the purpose of auditing the accounts of the assignees. Twenty-one days notice thereof, and [if the assignees wish] of declaring a dividend, is then to be given in the Gazette. The assignees attend accordingly, and give in their accounts upon oath; such of the creditors as have not already proved, then prove their debts, that they may entitle themselves to the dividend; and lastly, the dividend is declared. The following are the forms:—*

At the Court of Commissioners of Bankrupt,  
the                      day of                      1827.

Memorandum, that we the major part of the commissioners named in and authorised by a commission of bankrupt awarded and issued and now in prosecution against Joseph Styles, of ——— street, in the city of London, builder, dealer, and chapman, having met this day pursuant to notice in the London Gazette, do hereby pursuant to the directions contained in an act passed in the sixth year of the reign of his present majesty, entitled,—“An Act to amend the laws relating to bankrupts,”—appoint a public meeting to audit the accounts of the assignees of the said bankrupt, to be holden at the Court of Commissioners

of bankrupts, Basinghall-street, in the city of London, on Tuesday the 23d of June next, at twelve o'clock at noon, whereof and of the purport whereof we do hereby direct our messenger to cause an advertisement to be inserted in the London Gazette, twenty-two days previous to the said day hereby appointed for the said public meeting.

\* \* Signed by the Commissioners.

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*Advertisement in the Gazette.*

The commissioners in a commission of bankrupt awarded and issued against Joseph Styles, of ——— street, in the city of London, builder, dealer, and chapman, intend to meet on the ——— day of December next, at eleven o'clock in the forenoon, at the Court of Commissioners of Bankrupt, in Basinghall street, in the city of London, in order to audit the accounts of the assignees." [Adding, if it be intended to declare a dividend at the same meeting,] "and to make a dividend of the estate and effects of the said bankrupt; when and where the creditors, who have not already proved their debts, are to come prepared to prove the same, or they will be excluded the benefit of the said dividend. And all claims not then proved will be disallowed. But if it be intended to have two meetings, one for the auditing of the accounts, and the other for declaring the dividend and proof of debts, then the advertisement for the first meeting will be as above, ending at the word "Assignees;" and for the second meeting, it will be the same as the above, omitting all the words between "in order" and "to make a dividend," &c.

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*Memorandum of having audited the Assignees' Accounts.*

At the Court of Commissioners of Bankrupt,  
the ——— day of December, 1826.

Memorandum, that we, whose names are hereunto subscribed, being the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued against Joseph Styles, of ——— street, in the city of London, builder, dealer, and chapman, having met together the day and year and at the place above mentioned, for the purpose of auditing the accounts of the assignees of the said bankrupt's estate and effects, J. G. of ———, and C. J. of ———

(assignees of the said bankrupt) appeared before us and delivered in upon oath an account marked A., now filed with our proceedings, as a full and true statement of all money received by them respectively under the said commission, and when and on what account, and how the same has been employed; and we the undersigned, having examined the said accounts, and compared the receipts with the payments, do find that there is now a balance of seven hundred and fifty-eight pounds ten shillings and seven-pence halfpenny in the hands of the said assignees, applicable to a dividend. And we do further find that the said assignees have not, nor hath either of them, wilfully retained or otherwise employed any sum or sums of money, part of the estate of the said bankrupt, contrary to their covenant, or to the directions of the act relating to bankrupts.

\* \* \* *To be signed by the Commissioners.*

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# *Assignees' Account.*

J. G. and C. J. Assignees of the Estate of Joseph Styles, in account.

1827.	Dr.	£	s.	d.		Dr.	£	s.	d.
	To amount of sundry debts received, as per account in Book A. - - - -	780	2	3		By sundry disbursements, as per Book A. - - - -	127	14	2½
						—paid messengers's bill - -	32	14	2
	To amount received of Messrs. K. and Son, on account of the sale of stock - - -	306	12	0		—paid solicitor's bill - - -	89	15	3
						—paid T. L. on account of his bill, subsequent to the choice of assignees - - - -	80	0	0
		1086	14	3		Dec. 1826. At the Court of Commissioners of Bankrupt exhibited to us under a commission of bankrupt against Joseph Styles.	328	3	7½
	(To be signed by the Assignees.)	758	10	7					



*Assignees' Affidavit of the truth of their Account, where they cannot attend.*

In the matter of Joseph Styles, a bankrupt.

J. G. of ———, and C. J. of ———, merchants, assignees under a commission of bankrupt awarded and issued and now in prosecution against Joseph Styles, of ——— street, in the city of London, builder, dealer and chapman, severally make oath and say: and first, this deponent J. G. for himself saith that the sheets of paper hereunto annexed, marked A, and ———, [respectively] signed by him this deponent, do contain a full and true statement of all money received by him as assignee as aforesaid, and when and on what account and how the same has been employed; and that the several sums therein charged to have been allowed, paid and expended, have been really and *bonâ fide* allowed, paid, and expended, in manner and for the purposes therein mentioned. And this deponent C. J. for himself saith that he hath not received or paid any sum or sums of money whatsoever, for or on account of the estate and effects of the said bankrupt, under the said commission. [Or if he have, let his affidavit be the same as that of the other assignee.]

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*List of Debts proved.*

At the Court of Commissioners of Bankrupt,  
the ——— day of December, 1826.

List of debts proved under a commission of bankrupt against Joseph Styles.

	£	s.	d.
James Windham - - - : - - -	20	0	0
&c. &c. &c.			
Claim: Samuel Jackson - - - - -	246	16	0
	<hr/>		
	£2360	8	1
	<hr/>		

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*Order for a Dividend.*

At the Court of Commissioners of Bankrupt,  
the ——— day of December, 1826.

We whose names are hereunto subscribed, being the major part of the commissioners named in and authorized by a commis-

sion of bankrupt now in prosecution against Joseph Styles, of ——— street, in the city of London, builder, dealer, and chapman, having met together, the day and year and at the place above mentioned, in order to make a dividend of the estate of the said bankrupt, pursuant to notice in the London Gazette for that purpose given :

And it appearing to us by an examination of the proceedings, and by a statement in writing delivered to us upon the oath of [J. G. and C. J. the assignees," or "J. G. the acting assignee] of the said bankrupt's estate, that there is the sum of £708 : 2 : 6 to be divided ; which sum is to be composed as follows :—

	£	s.	d.
Gross sum received - - - - -	1086	14	3
	378	11	9

Deduction to be made from gross sum received.

	£	s.	d.
Payments duly made - - - - -	328	3	7½
Sum ordered by us to be retained until the next dividend, to answer such charges and expenses as the assignees may be legally liable to	50	8	1½
	378	11	9

Difference, being the sum to be divided, 708 2 6

And it also appearing to us that the debts proved and claimed under the said commission, and now standing upon our proceedings, amount to the sum of £2360 : 8 : 1, that is to say,

	£	s.	d.
Debts proved - - - - -	2113	12	1
Debts claimed - - - - -	246	16	0
	2360	8	1

And it also appearing to us that the sum of £708 : 2 : 6, so being in the hands of the assignees to be divided, is sufficient to pay all the creditors and claimants the sum of six shillings in the pound upon their several debts : We do therefore order a dividend of six shillings in the pound, to be paid to all the said bankrupt's creditors who have proved their debts, and

unto the claimants, when they shall have substantiated their claims, in proportion to their several debts; which said dividends, as we compute the same, will amount to the sum of £708 : 2 : 6. And we do find that the assignees have not, nor has either of them, wilfully retained, or otherwise employed, any sum or sums, part of the estate of such bankrupt, contrary to their covenant, or to the directions of the act relating to bankrupts.

\* \* Two copies to be signed by the Commissioners: one to be filed with the proceedings, and the other delivered to the Assignees.

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*After the dividend is declared, the solicitor should prepare for the assignees a list of the debts proved under the commission, and a computation of the dividend payable on each, thus:*

A list of debts proved under the commission of bankrupt against Joseph Styles, of ——— street, in the city of London, builder, with each creditor's dividend on the sum of £708 : 2 : 6 which sum by an order of the commissioners acting under the said commission, bearing date the ——— day of December, 1826, is ordered to be divided among the creditors after the rate of six shillings in the pound, upon their several and respective debts.

Names of Creditors.	Debts proved.	Dividend payable.
James Windham.	20 0 0	6 0 0
&c.	&c,	&c.

\* \* The charge for making this computation and preparing and copying this list is allowed in the bill of costs.

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*Order to pay the Dividend.*

Gentlemen,

Please to pay ——— the sum of ———, being his dividend of ——— shillings in the pound on his debt of ———, proved under the commission of bankrupt against Joseph Styles, of ——— street, London, builder, dealer and chapman.

Yrs, &c.

To Messrs. J. G. and C. J.  
said bankrupt's assignees.

T. L.

16th May, 1827.

\* \* Obtained from the Solicitor to the Commission, upon application.

*Upon this authority the assignees pay the creditor, taking a receipt for the same in a book, as follows:*

Received, this — day of —, 1827, from Messrs. J. G. and C. J., assignees of the estate and effects of Joseph Styles, a bankrupt, the sum of six pounds, being a dividend of six shillings in the pound on my debt of £20, proved under the said commission.

JAMES WINDHAM.

\* \* See 6 Geo. 4, c. 16, § 107. p. 212, ante.

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*Power of Attorney to receive Dividends.*

Know all men by these presents, That we, Charles Jameson, of the city of York, innkeeper, and James Windham, of the same place, miller, creditors of Joseph Styles, of — street, in the city of London, builder, the person against whom a commission of bankrupt hath been awarded and issued, and is now in prosecution, and bearing date at Westminster, the — day of —, 1827, having duly proved our respective debts under the said commission, have made, ordained, authorized, constituted, and appointed, and by these presents do make, ordain, authorize, constitute, and appoint, and in our places and steads respectively put John Franks, of — street, in the city of London, merchant, to be our true and lawful attorney for us, and in our names, places, and steads respectively, and for our proper uses and benefits respectively, to ask, demand, sue for, and receive of and from the assignee or assignees of the said bankrupt's estate and effects, or whom else these presents do, shall, or may concern, all and every such sum or sums of money as now is, are, or which shall hereafter become due or payable to us the said Charles Jameson and James Windham for our respective dividends or shares of the said bankrupt's estate and effects on our said respective debts so duly proved under the said commission as aforesaid, and on receipt thereof for us, and in our respective names to sign, seal, and deliver all and every such good and sufficient receipts, acquittances, releases, and discharges to the said assignee or assignees as shall and may be lawful, fit, and convenient to be executed; and generally to do all and every such further and other lawful act and deed, matter and thing in the law, for the better executing and discharging the power and authority hereby given as full and amply to all intents and purposes as we ourselves, or either of us, might or could do, if personally present and did the same, hereby ratify-

ing, allowing, and confirming, and undertaking to ratify, allow, and confirm all and whatsoever our said attorney shall or may lawfully do, or cause to be done, in and about the said premises, for the better executing the purposes aforesaid, by virtue of these presents. In witness whereof, we, the said Charles Jameson and James Windham, have to these presents set our hands and seals, this third day of May, in the year of our Lord, 1827.

Charles Jameson, (L. S.)

James Windham. (L. S.)

Signed, sealed, and delivered  
in the presence of  
J. T.  
R. W.

\* \* To be executed on unstamped paper, and the execution to be verified by affidavit (see the form, ante, p. 47), which must be annexed to the power.

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*If from any circumstance disclosed to the commissioners at the meeting, it appear necessary or advisable to defer the declaring of a dividend, get them to sign the following*

*Memorandum of Adjournment of the Dividend.*

At the Court of Commissioners of Bankrupt,  
the —— day of December, 1826.

Memorandum, that we whose names are hereunto subscribed, being the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued, and now in prosecution against Joseph Styles, of —— street, in the city of London, builder, dealer and chapman, met on the day and year and at the place above-mentioned, pursuant to notice in the London Gazette, in order to make a dividend of the said bankrupt's estate and effects; but [the outstanding estate and effects of the said bankrupt not being as yet collected, therefore, at the request of the assignees and creditors present," (or stating such other reason as the commissioners may have for the adjournment)] we do adjourn until the —— day of —— next, at eleven of the clock in the forenoon, at this place, for the purpose of making a dividend of the said bankrupt's estate and effects.

\* \* To be signed by the Commissioners.

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*Or if the meeting advertised be merely for the purpose of auditing the accounts of the assignees, and not for declaring a dividend (for it is optional with the assignees whether they call the meeting for the latter purpose or not, until after their accounts have been audited), and it appears to the commissioners that the assignees have collected assets enough to make a dividend, they may, at any time after 4, and before the expiration of 12 calendar months from the suing out of the commission, summon the assignees before them to shew cause why a dividend should not be declared. The following is the form of the*

*Summons to the Assignees.*

You are hereby required to attend us, the major part of the commissioners named in a commission of bankrupt, awarded against Joseph Styles, of — street, in the city of London, builder, dealer and chapman, on the — day of —, at Wright's Rooms, in Quality-court, Chancery-lane, to shew cause why notice has not been given by you for making a dividend of the estate and effects of the said bankrupt, according to the act of parliament in that case made and provided; at which time and place you are to produce your receipts and payments touching the same, in order to the making of a dividend and distribution of such part as shall appear to be remaining in your hands.—Given under our hands this — day of —, 1827.

To J. G. and C. J., assignees of  
the estate and effects of Joseph  
Styles, a bankrupt. }

\* \* *To be signed by the Commissioners.*

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*5. Further Dividend.*

*Advertisement of the Audit and Dividend.*

Same as the form, *ante*, p. 109, except that instead of “and to make a dividend,” you say “and to make a further dividend.”

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*Memorandum of having audited the Assignees' Accounts.*

Same as the form *ante*, p. 109, *mutatis mutandis*, except that

after the words "*all money received by them respectively under the said commission,*" you add, "*since their accounts were last audited by us.*"

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*Assignees' Account.*

Same as the form *ante* p. 111, the first item on the debit side being "*To balance at the last audit, £——.*" And see the form of the assignees' affidavit, if necessary, *ante*, p. 112.

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*List of Debts proved.*

See the forms *ante*, p. 112, 114. Two lists must be made out: one of the debts proved since the last dividend; and the other, of all the debts proved, and the dividends payable thereon.

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*Order for a further Dividend.*

At the Court of Commissioners of Bankrupt,  
the —— day of February, 1827.

We whose names are hereunto subscribed, being the major part of the commissioners named and authorized in and by a commission of bankrupt now in prosecution against Joseph Styles, of —— street, in the city of London, builder, dealer and chapman, having met together, the day and year and at the place above mentioned, in order to make a further dividend of the estate of the said bankrupt, pursuant to notice in the London Gazette for that purpose given: and it appearing to us, by an order of dividend made the —— day of December last, that the assignees were ordered to divide amongst all the creditors of the said bankrupt, who had proved their debts, and unto the claimants when they should have substantiated their claims under the said commission, the sum of six shillings in the pound in proportion to their several debts; and that the assignees retained in their hands the sum of 50 : 8 : 1½ : And it further appearing to us by an examination of the proceedings, and by a statement in writing delivered to us upon the oath [of J. G. and C. J. the assignees" or "of J. G. the acting assignee, C. J., the other assignee, not having received any part of the said bankrupt's estate and effects, as also appears to us upon the oath of the said

J. G.] of the said bankrupt's estate, that there is the sum of £178 : 8 : 7 now to be divided, which sum is composed as follows :—

Gross sum received.

	£	s.	d.
Retained at last dividend - - -	50	8	1½
Since got in - - - - -	248	11	7
Dividends retained upon claims this day expunged - - - - -	0	0	0
	<hr/>	<hr/>	<hr/>
	298	19	8½

Deduction to be made from gross sum received.

	£	s.	d.
Payments duly made - - - - -	61	19	9
Sum ordered by us to be retained until the next dividend, to answer such charges and expenses as the assignees may be legally liable to	58	11	4½
	<hr/>	<hr/>	<hr/>
	120	11	1½

Difference, being the sum to be divided,      £178    8    7

And it also appearing to us that the debts proved and claimed on this and on former days, and now standing upon our proceedings, amount to the sum of £2727 : 17 : 5 : that is to say,

	£	s.	d.
Debts proved before this day - - -	2113	12	1
Debts claimed before this day, and now standing on the proceedings -	246	16	0
Debts proved this day - - - - -	367	9	4
Debts claimed this day - - - - -	0	0	0
	<hr/>	<hr/>	<hr/>
	2727	17	5

And it also appearing to us that the sum of £178 : 8 : 7, so being in the hands of the assignees to be divided, is sufficient to pay to the creditors, who have this day so proved and claimed, the sum of six shillings in the pound, and to pay to all the creditors and claimants the further sum of sixpence in the pound upon their several debts : we do therefore order that the said



dividend of six shillings in the pound shall be paid to or retained for such of the said bankrupt's creditors who have this day proved or claimed. And we do further order a further dividend of sixpence in the pound, to be paid to all the said bankrupt's creditors, who have proved their debts, and unto the claimants, when they shall have substantiated their claims, in proportion to their several debts; which said dividends, as we compute the same, will amount to the sum of 178: 8: 7. And we do find that the assignees have not, nor has either of them, wilfully retained, or otherwise employed, any sum or sums, part of the estate of such bankrupt, contrary to their covenant, or to the directions of the act relating to bankrupts.

\* \* *Two copies to be signed by the Commissioners: one to be filed with the proceedings, and the other delivered to the Assignees.*

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### 6. *Final Dividend.*

*Previously to the making a final dividend, all claims made upon the estate, and not substantiated, are struck out as a matter of course.*

### *Advertisement, &c.*

The advertisement and the other forms are the same as the forms under the two preceding heads, with the exception of the

### *Order for a Final Dividend.*

At the Court of Commissioners of Bankrupt,  
the —— day of April, 1827.

We whose names are hereunto subscribed, being the major part of the commissioners authorized in and by a commission of bankrupt now in prosecution against Joseph Styles, of —— street, in the city of London, builder, dealer and chapman, having met together, the day and year and at the place above mentioned, in order to make a final dividend of the estate of the said bankrupt, pursuant to notice in the London Gazette for that purpose given: and it appearing to us, by orders of dividend made the —— day of December last, and on the —— day of February last, that dividends to the amount of six shillings and sixpence

in the pound have been by us ordered to be paid to the creditors or retained for the claimants.

And it further appearing to us, by an examination of the proceedings, and by a statement in writing delivered to us upon the oath of [J. G. and C. J., the assignees, "or J. G., the acting assignee, C. J., the other assignee, not having received any part of the said bankrupt's estate and effects, as also appears to us upon the oath of the said J. G.] of the said bankrupt's estate, that there is the sum of £974 : 3 : 5½ now to be divided, which sum is composed as follows:—

## Gross sum received.

	£	s.	d.
Retained at last dividend . . . . .	58	11	4½
Since got in . . . . .	1024	13	2
Dividends retained upon claims this day expunged . . . . .	80	4	2½
	<u>1163</u>	<u>8</u>	<u>9</u>

## Deduction to be made from gross sum received.

	£	s.	d.
Payments duly made . . . . .	189	12	4½

Difference, being the sum to be divided, . . . . . 973 16 4½

And it also appearing to us, that the debts proved on this and on former days, amount to the sum of £2976 : 15 : 5, that is to say,

	£	s.	d.
Debts proved before this day . . . . .	2481	1	5
Debts proved this day . . . . .	248	18	0
	<u>2729</u>	<u>19</u>	<u>5</u>

And it also appearing to us that the sum so being in the hands of the assignees to be paid to the creditors who have this day six shillings and six-pence in the pound; creditors the further sum of six shillings in the pound upon their several debts: we that the said dividend of six shillings and

shall be paid to such of the said bankrupt's creditors who have this day proved. And we do further order a final dividend of six shillings and sixpence halfpenny in the pound to be paid to all the said bankrupt's creditors who have proved their debts; which said dividends, as we compute the same, will amount to the sum of 973 : 16 : 4½, leaving nothing more in the hands of the said assignees. And we do find that the assignees have not, nor has either of them, wilfully retained, or otherwise employed, any sum or sums, part of the estate of such bankrupt, contrary to their covenant, or to the directions of the act relating to bankrupts.

\* \* Two copies to be signed by the Commissioners: one to be filed with the proceedings, and the other delivered to the Assignees.

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### *7. Choice of New Assignees.*

#### *Petition by an Assignee to be removed.*

In the matter of Joseph Styles,  
a bankrupt.

To the Right Honourable the Lord High Chancellor of  
Great Britain.

The humble petition of ———, one of the assignees of Joseph Styles, late of ——— street, in the city of London, builder, dealer and chapman, a bankrupt,

Sheweth,

That a commission of bankrupt under the Great Seal of Great Britain, bearing date at Westminster, the ——— day of ——— last, was awarded and issued against the said Joseph Styles, who was thereupon duly declared a bankrupt.

That on the ——— day of ——— last, your petitioner and one J. G., of ———, merchant, were duly chosen assignees of the estate and effects of the said bankrupt; and the personal estate and effects of the said bankrupt were thereupon duly assigned to the said J. G. and your petitioner by the major part of the commissioners in the said commission named, in trust to divide the same among all the creditors of the said bankrupt, seeking, or who should thereafter seek, relief under the said commission.

That your petitioner, on account of his ill state of health is incapable of attending to or acting in the trust reposed in him as one of the assignees of the said bankrupt's estate." [or stating such other circumstances as may be deemed sufficient to excuse the petitioner.]

That no dividend hath yet been made under the said commission ; and that neither your petitioner, nor any other person for his use, hath received or possessed any money, goods or effects belonging to the said bankrupt or his estate ; nor hath your petitioner or any person for him or on his behalf, in his custody, power or disposition, any of the said bankrupt's estate or effects : as by the affidavit of your petitioner appears.

Your petitioner therefore humbly prays your Lordship that he may be discharged from being one of the assignees under the said commission, and that he may release all his right, title and interest of, in and to the said bankrupt's estate and effects, to [J. G. his co-assignee, and to] such assignee or assignees as may be chosen and appointed in his stead, or that your Lordship will please to make such order in the premises as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

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*Affidavit to verify the same.*

This is an affidavit of the facts stated in the petition, (omitting of course the prayer,) and sworn before a master. See post.

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*Petition to remove an Assignee, for misconduct, or the like.*

Commencement same as the last form ; then state the issuing of the commission ; and then proceed as follows :

That on the——day of——last, one J. G. of——merchant, and C. J. of——merchant, were duly chosen assignees of the estate and effects of the said bankrupt, and the personal estate and effects of the said bankrupt were thereupon duly assigned to the said J. G. and C. J. by the major part of the commissioners in the said commission named, in trust to divide the same among all the creditors of the said bankrupt, seeking or who should thereafter seek relief under the said commission.

That your petitioner was and still is a creditor of the said

bankrupt for the sum of 160*l.* and hath accordingly proved the said debt under the said commission.

That no dividend hath yet been paid by the said assignees, but the said J. G. has received several sums of money under the said commission, and is and always hath been ready and willing to account for and divide the same amongst the creditors of the said bankrupt.

That the said C. J. the other assignee, hath also received several considerable sums of money under the said commission, and also, as your petitioner hath been informed and verily believeth, hath converted to his own use a large quantity of cheese, by him sold and consigned to the said bankrupt, and belonging to his estate, insisting that the same was never sold to the said bankrupt. And your petitioner and the said J. G. and others of the creditors of the said bankrupt, have from time to time applied to the said C. J. in order to inspect the account of the several sums of money received by him, and to prevail upon him to consent to make a dividend thereof, but he refuses so to do. [*So stating the matter of complaint against the assignee.*]

Your petitioner therefore humbly prays your Lordship that C. J. may be discharged from being assignee under the said commission; that the major part of the commissioners in the said commission named do forthwith cause a meeting of the creditors of the said bankrupt to be duly had and held, for the purpose of proceeding to the choice of an assignee or assignees of the estate and effects of the said bankrupt, in the place and stead of the said C. J., to act with the said J. G.; and that the said C. J. may come to an account before the major part of the commissioners named in the said commission, touching such part or parts of the estate and effects of the said bankrupt as may have come to his hands, as assignee under the said commission, and that the same be forthwith delivered or paid over to the said J. G. and the new assignees so to be chosen as aforesaid, together with all books, papers, and writings touching the estate and effects of the said bankrupt, in the possession, custody, or power of him the said C. J.; and that the said C. J. do execute a release of all his right, title, and interest in and to the estate and effects of the said bankrupt remaining unreceived and undisposed of, and may assign over the same to the said J. G. and to such

person as may be chosen assignee in his place and stead as aforesaid ; and that the costs of the meeting of the said commissioners for the choice of such assignee, as also of the taking of such accounts, together with the costs of this application, may be paid [out of the estate and effects of the said bankrupt] ; or that your Lordship will please to make such order in the premises as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

*Affidavits to verify the same.*

These must state the facts upon which the petition is founded.  
*See post.*

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*Order thereon.*

Wednesday, the — day of March, 1827.

In the matter of Joseph Styles, a bankrupt.

Lord Chancellor.

Whereas — did on the — day of — instant, prefer his petition to me, shewing that" [*&c. reciting the petition*] ; " and therefore praying that" [*&c. reciting the prayer of it*] ; " Whereupon all parties concerned were ordered to attend me on the matter of the said petition : Now upon hearing the said petition and several affidavits read, and upon hearing counsel on the part of the petitioner, and also on the part of the said J. G. (no person attending on the part of the said C. J., the other assignee, although he was duly served with the said petition and my order thereon, as by the affidavit of T. L. fully appears), I do order that" [*here state the order in the terms of the prayer of the petition, if granted generally, or with such alterations as the Chancellor shall have made in it.*] *See title " Petitions," post. p. 156.*

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11.

*Memorandum of Application for the Appointment of an Assignee, in the room of one who has died or becomes bankrupt.*

At the Court of Commissioners of Bankrupt,  
the — day of — 1827.

Memorandum, that we, whose names are hereunto subscribed,

being the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued against Joseph Styles, of —— street, in the city of London, builder, dealer and chapman, having met together the day and year and at the place above mentioned, and being informed and given to understand that C. J., who together with J. G. was lately chosen and appointed assignee of the estate and effects of the said Joseph Styles, hath since [died" or " become bankrupt] ; and application in writing being now made to us, the major part of the commissioners aforesaid, signed by one J. N., a creditor of the said bankrupt, who hath proved his debt under the said commission, and is entitled to vote in the choice of assignees, that we should cause due notice to be given in the London Gazette, and in such other of the public papers as we shall think fit, of the time and place when and where we shall proceed to the choice of a new assignee, in the room and stead of the said C. J., ; We therefore order and direct that due notice be given in the London Gazette, and in the —— public newspaper, that the commissioners in the said commission named, or the major part of them, intend to meet at the Court of Commissioners of Bankrupt, on the —— day of —— next, when and where the creditors of the said bankrupt, who have already proved their debts under the said commission, are to attend, in order to choose one or more assignee or assignees of the said bankrupt's estate and effects, in the room of C. J. late one of the assignees [who hath died" or " become bankrupt.]

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*Advertisement in the Gazette.*

The commissioners in a commission of bankrupt awarded and issued against Joseph Styles, of —— street in the city of London, builder, dealer and chapman, intend to meet at the Court of Commissioners of Bankrupt, on the —— day of —— next, when and where the creditors of the said bankrupt, who have already proved their debts under the said commission, are to attend, in order to choose one or more assignee or assignees of the said bankrupt's estate and effects, in the room of C. J. late one of the assignees, [who hath been discharged from being assignee by an order of the right honourable the Lord High Chancellor of Great Britain," or " who hath lately died" or " who hath lately become bankrupt.]

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*Memorandum of the choice of a new Assignee.*

Same as the form ante, p. 48, merely adding after the name, &c. of the new assignee, the words "*in the room of C. J. late one of the assignees, who hath been discharged from being assignee by an order of the right honourable the Lord High Chancellor of Great Britain.* Or, if the new assignee has been chosen instead of one who has died or become bankrupt, add "*in the room of C. J. late one of the assignees, who hath died*" or "*become bankrupt.*"

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*Assignment to the New Assignees.*

This indenture of three parts, made the ——day of ——in the year of our Lord ——, between J. G. of ——, merchant, and C. J. of ——, merchant, of the first part; A. B., C. D., and E. F., esquires, the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued against Joseph Styles, late of —— street, in the city of London, builder, dealer, and chapman, of the second part; and L. M. of ——, merchant, and O. P. of ——, maltster, of the third part. Whereas by indenture of assignment, bearing date on or about the ——day of —— in the year of our Lord ——, and made between the said A. B., C. D., and E. F. of the one part, and the said J. G. and C. J. of the other part; reciting that his Majesty's commission under the Great Seal of Great Britain, grounded upon the statute made and then in force concerning bankrupts, bearing date at Westminster, the —— day of —— then last past, had been awarded and issued against the said Joseph Styles directed unto the said A. B., C. D., and E. F. together with G. H. esquire, and I. K. gentleman, thereby giving full power and authority to them the said commissioners, four or three of them, to execute the same, as in and by the said commission, relation being thereunto had might more fully and at large appear; and also reciting, that the major part of the said commissioners, in the said commission named and authorized, having duly qualified themselves to act in the said commission by taking the oath required for that purpose, and having begun to put the said commission into execution, upon due examination of witnesses, and other good proof upon oath before them taken, had found that the said Joseph Styles had for the space of [two] years then last past, and before the date and suing forth of the said commission, carried on and followed the trade and business of a builder, and during all that time had sought and endeavoured to



get his livelihood thereby, as others of the same trade and business usually did ; and that the said Joseph Styles, so seeking and endeavouring to get his livelihood thereby, before the date and suing forth of the said commission, became indebted to John Nokes, of — street, in the city of London, merchant, in the sum of one hundred and seventy-four pounds, and being so indebted, had, before the date and suing forth of the said commission, in the judgment of the major part of the commissioners in the said commission named, become bankrupt to all intents and purposes, within the true intent and meaning of the statute in the said commission named, and was by them declared bankrupt accordingly ; and further reciting, that on the day of the date of the indenture now in recital, being the day appointed, according to notice in the London Gazette, for the choice of an assignee or assignees of the said bankrupt's estate and effects, at the Court of Commissioners of Bankrupt, London, the said J. G. and C. J. were duly chosen assignees of the estate and effects of the said Joseph Styles ; it was by the indenture now in recital witnessed, that the said commissioners, parties thereto and to these presents, in further execution of the said commission, and by force and virtue thereof and of the statute therein mentioned, and for the consideration therein mentioned, and also for and in consideration of the covenants thereafter contained on the part and behalf of the said J. G. and C. J., and to and for the use, intents and purposes thereafter mentioned and expressed, did order, dispose, bargain, sell, assign, transfer and set over unto the said J. G. and C. J., their executors, administrators and assigns, all and singular the goods, chattels, wares, merchandizes, debts, sum and sums of money, and all other the personal estate whatsoever and wheresoever, whereof the said Joseph Styles was possessed of, interested in, or entitled unto, or of which any other person or persons were or was possessed of in trust for him at the time he became bankrupt as aforesaid, or at any time since ; and all the estate, right, title, or interest, equity of redemption, property, claim, and demand whatsoever of him the said Joseph Styles, of, in, or to the same, or any part thereof, to have and to hold, ask, demand and sue for, receive and take, all and singular the said goods, chattels, wares, merchandizes, debts, sum and sums of money, and effects, and all and singular other the premises, thereby ordered, disposed, bargained, sold, assigned, transferred, and set over, or mentioned or intended so to be, and every part and parcel thereof, unto the said J. G. and C. J., their executors, administrators and assigns, from thenceforth, as their own proper goods and chattels for ever ; in trust, nevertheless, to and for the use

benefit and advantage of them the said J. G. and C. J., and of all such other of the creditors of the said Joseph Styles as had already sought, or should thereafter in due time come in as creditors and seek relief under the said commission, according to the limitations and directions of the statute in that behalf made and provided, and to and for no other use, intent or purpose whatsoever : as in and by the said recited indenture, reference being thereunto had, will more fully and at large appear. And whereas, by an order made in the matter of the said Joseph Styles, bankrupt as aforesaid, by the Lord High Chancellor of Great Britain, bearing date on or about the — day of — last past, reciting, [that L. M. and O. P., two of the creditors of the said Joseph Styles, on behalf of themselves and the several other creditors of the said Joseph Styles, who had proved their debts under the said commission, did, on the — day of — last, prefer their petition to his lordship, thereby praying (amongst other things), for the reasons therein contained, that the said J. G. and C. J. might be discharged from being assignees under the said commission, and that a new assignee or assignees might be chosen to act in their stead ; and that the said J. G. and C. J. might join in executing an assignment of the said bankrupt's personal estate, and bargain and sale of his real estate, to such assignee or assignees, so to be chosen and appointed ; it was by the said Lord High Chancellor ordered, that they the said J. G. and C. J. should be removed from being assignees of the estate and effects of the said Joseph Styles ; and that the major part of the commissioners in the above-mentioned commission named, should call a meeting of the creditors, for the purpose of, proceeding to the choice, of another assignee or assignees, in the place and stead of the said J. G. and C. J. ; and that the said J. G. and C. J. should join in executing an assignment of the said bankrupt's personal estate, and a bargain and sale of his real estates, to such new assignee or assignees so to be appointed," *reciting the order in the past tense*] " as in and by the said recited order, reference being thereunto had, will more fully and at large appear. And whereas, in pursuance of the said order, the major part of the commissioners in the said commission named, caused due notice to be given and published in the London Gazette, appointing the creditors of the said Joseph Styles to meet at the Court of Commissioners of Bankrupt, this present — day of —, for the choice of a new assignee or assignees of the said bankrupt's estate and effects, in the room of the said J. G. and C. J. And whereas, at such meeting, the major part in value of the creditors of the said Joseph Styles present, who had proved debts under the said commission, amounting

to twenty pounds or upwards, did nominate, elect, and choose the said L. M. and O. P. to be new assignees of the estate and effects of the said Joseph Styles, in the room of the said J. G. and C. J. : Now this indenture witnesseth, that in pursuance to the said recited order, and in obedience thereto, and in consequence of such meeting held at the Court of Commissioners of Bankrupt, as aforesaid, and for and in consideration of the sum of five shillings of lawful money of Great Britain, to them the said J. G. and C. J. respectively in hand paid by the said L. M. and O. P. at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), and also for and in consideration of the covenants hereinafter contained on the part and behalf of the said L. M. and O. P., their and every of their executors, administrators and assigns, to be kept, done and performed, and to and for the uses, intents and purposes hereinafter mentioned and expressed, they the said J. G. and C. J. (by and with the privacy, consent and direction of the said A. B., C. D., and E. F., the major part of the commissioners named and authorized in and by the said commission, testified by their being parties to, and sealing and delivering these presents, have ordered, bargained, sold, disposed, assigned and set over, and by these presents do (as much as in them lieth and they lawfully may) order, bargain, sell, dispose, assign and set over unto the said L. M. and O. P., their executors and administrators, all and singular the goods, wares and merchandizes, chattels, stock in trade, debts, sum and sums of money, household stuff and implements of household, and all other the personal estate and effects whatsoever, of the said Joseph Styles, of which he was possessed or entitled unto, or of which any other person or persons was or were possessed in trust for him, at the time he became bankrupt as aforesaid, or at any time since, remaining unreceived and not disposed of by the said J. G. and C. J. ; and all the right, title, interest, property, claim and demand whatsoever of them the said C. J. and J. G., of, in, or to the same, or any part thereof, as assignees of the estate and effects of the said Joseph Styles as aforesaid. And the said commissioners, parties to these presents, for and in consideration of the sum of five shillings to each of them in hand also paid by the said L. M. and O. P., at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have, and each and every of them hath ratified and confirmed, and by these presents do, and each and every of them doth (as much as in them lieth, and as they lawfully may) ratify and confirm unto the said L. M. and O. P., their executors, administrators and assigns, all and singular the said goods, wares and mer-

chandises, chattels, stock in trade, debts, sum and sums of money, household stuff and implements of household, and all other the estate and effects wheresoever, of or belonging to the said Joseph Styles, hereinbefore and hereby ordered, bargained, sold, disposed, assigned and set over by the said J. G. and C. J. unto the said L. M. and O. P., their executors, administrators and assigns, or intended so to be; upon trust, nevertheless, to and for the use, benefit and advantage of all the creditors of the said Joseph Styles, who have already sought, or shall hereafter in due time come in and seek, relief by virtue of the said commission, according to the directions and limitations of the statute in that case made and provided, and to and for no other use, intent, or purpose whatsoever. And the said L. M. and O. P. do hereby for themselves severally and respectively, and for their several and respective executors and administrators, and not one of them for the other of them, or for the acts, deeds, or defaults of the other of them, but each for himself separately, and for his own separate acts, deeds, and defaults only, covenant, promise and agree to and with the said commissioners, parties to these presents, and to each and every of them, in manner following, that is to say: That they the said L. M. and O. P., their executors, administrators and assigns, shall and will, with all convenient speed, by all lawful and equitable means, use their utmost endeavours to recover and get in the several goods, wares and merchandize, chattels, stock in trade, debts, sum and sums of money, household stuff and implements of household, and all other the estate and effects whatsoever and wheresoever, late of the said Joseph Styles, hereby assigned, or intended so to be, and which are now outstanding and unreceived; and shall and will, with all convenient speed, sell and dispose thereof, to and for the most money and best price they can get for the same. And further, that they the said L. M. and O. P., their executors, administrators and assigns, shall and will, from time to time, and at all times hereafter, upon reasonable request or notice to them given for that purpose, give and render unto the said commissioners, parties to these presents, or to the major part of the said commissioners in and by the said commission named and authorized, and the major part of the commissioners to be named in and by any renewed commission which may be awarded against the said Joseph Styles, at such time and place as they shall appoint, a true, just and perfect account in writing, under the hands of the said L. M. and O. P., their executors or administrators, of what and how much money and other satisfaction they the said L. M. and O. P., their executors or administrators, shall have had, re-

covered and received, by virtue or means of this present deed of assignment or otherwise, out of the estate and effects of the said Joseph Styles ; and such money or other satisfaction as upon such account shall appear to be had, raised and received by the said L. M. and O. P., their executors or administrators, they the said L. M. and O. P., their executors or administrators, shall and will well and truly pay, or cause to be paid, unto them the said commissioners, parties to these presents, or the major part of the said commissioners in and by the said commission named, or to the commissioners to be named in any such renewed commission, or the major part of them, or to such person or persons as they shall appoint, to the end the same or other satisfaction may be by them the said commissioners in and by the said commission named and authorized, or the major part of them, ordered, disposed, distributed and divided unto and amongst all and every the creditors of the said Joseph Styles, who have already sought, or shall hereafter in due time come in and seek, relief by virtue of the said commission, according to the limitations and directions of the statute therein mentioned, proportionably according to the several debts owing to them severally and respectively from the said Joseph Styles, and in the mean time until such dividend shall be made as aforesaid, they the said L. M. and O. P. shall and will from time to time, as and when the money to be received by them or either of them from or out of the said bankrupt's estate and effects shall amount to the sum of one hundred pounds or upwards, pay the same in the joint names of the said assignees into the hands of \_\_\_\_\_ for safe custody, there to remain for the benefit of the said bankrupt's creditors, and subject to the order of the said commissioners, or the major part of them ; and lastly, that they the said L. M. and O. P., their executors and administrators, shall and will from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless and indemnified, the said commissioners in and by the said commission named and authorized, or in and by any renewed commission to be named and authorized, their and his messengers, agents, servants, executors and administrators, and every of them, their and every of their bodies, lands, tenements, goods and chattels, of, touching, or concerning all and all manner of action and actions, suits, arrests, troubles, costs, damages and expenses whatsoever, which they or any of them shall sustain or be put unto, for or by reason of this present deed of assignment, or any other act or acts, thing or things, lawfully done or executed by virtue of the said commission or the said recited assignment, or their or any of their lawful intermeddling in any of the estate

or effects of the said Joseph Styles. In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first herein written.

Signed, sealed, and delivered by the within named —, in the presence of

\* \* \* This form may readily be altered, as circumstances may require. If one assignee alone be removed, the assignment and bargain and sale should be by both of the former assignees, to the remaining assignee and the assignee newly chosen ; if one die, the assignment, &c. should be by the remaining assignee to himself and the new assignee ; if both die, or one or both abscond, the former assignment, &c. should be vacated, and a new assignment, &c. executed by the commissioners to the assignees newly chosen.

### *Bargain and Sale to the New Assignees.*

This indenture of three parts, made the — day of —, in the year of our Lord —, between J. G., of —, merchant, and C. J., of —, merchant, of the first part ; A. B., C. D., and E. F., esquires, the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued against Joseph Styles, late of — street, in the city of London, builder, dealer and chapman, of the second part ; and L. M. of —, merchant, and O. P. of —, makster, of the third part : Whereas by indenture of bargain and sale, bearing date on or about the — day of —, in the year of our Lord —, and made between the said A. B., C. D., and E. F., of the one part, and the said J. G. and C. J. of the other part ; reciting, that his Majesty's commission under the great seal of Great Britain, grounded upon the statute made and then in force concerning bankrupts, bearing date at Westminster the — day of —, then last past, had been awarded and issued against the said Joseph Styles, directed unto the said A. B., C. D., and E. F., together with G. H., esquire, and I. K., gentleman, thereby giving full power and authority to them the said commissioners, four or three of them, to execute the same, as in and by the said commission, relation being thereunto had, might more fully and at large appear : and also reciting, that the major part of the said commissioners in and by the said commission named

and authorized, having duly qualified themselves to act in the said commission by taking the oath required for that purpose, and having begun to put the said commission into execution, upon examination of witnesses, and other good proof upon oath before them taken, had found that the said Joseph Styles had for the space of [two] years then last past, before the date and suing forth of the said commission, carried on and followed the business of a builder, and during all that time had sought and endeavoured to get his livelihood thereby, as others of the same trade and business usually did ; and that the said Joseph Styles, ~~so~~ seeking and endeavouring to get his livelihood thereby, before the date and suing forth of the said commission, became indebted to John Nokes, of — street, in the city of London, merchant, in the sum of £174 ; and being so indebted, he the said Joseph Styles had, before the date and suing forth of the said commission, in the judgment and opinion of the major part of the commissioners in the said commission named, become a bankrupt to all intents and purposes, within the true intent and meaning of the statute in the said commission mentioned, and was by them declared bankrupt accordingly ; and also reciting, that on the day of the date of the said indenture now in recital, being the day appointed according to notice in the London Gazette, for the choice of an assignee or assignees of the said bankrupt's estate and effects, at the Court of Commissioners of Bankrupt, London, the major part in value of the creditors of the said Joseph Styles then present, who had proved their debts under the said commission, and whose debts respectively amounted to £20 or upwards, did then and there nominate, elect, and choose the said J. G. and C. J. (parties hereto) to be assignees of the estate and effects of the said Joseph Styles, and desired the said commissioners to make an assignment to them accordingly ; and that the said commissioners did thereupon accordingly order, bargain, sell, assign, and set over all the personal estate and effects of the said Joseph Styles unto the said J. G. and C. J., in trust for themselves and all such other of the creditors of the said Joseph Styles who should be entitled to the benefit and advantage of the said estate and effects, as in and by the said assignment was mentioned ; and further reciting, that the said commissioners, (parties thereto,) in further execution of the said commission, did find that the said Joseph Styles, at the time he became a bankrupt, and before the date and issuing forth of the said commission, was seised to him and his heirs of [certain freehold estates situate at — in the county of —, or otherwise interested in or entitled to the same, subject to certain mortgages and incumbrances thereon] : it was, by the indenture now in recital, witnessed, that the said com-

missioners, parties thereto and to these presents, in further execution of the said commission and by force and virtue of the same and of the statute therein mentioned, and for the considerations in the said indenture mentioned, did grant, bargain, sell, assign and set over unto the said J. G. and C. J. their heirs and assigns, all the said bankrupt's messuages, lands, tenements, and hereditaments, situate and being in the county of Middlesex and elsewhere, and all" [*&c. stating the parcels as in the bargain and sale*] "to have and to hold the said freehold estates, and all and singular the premises therein before mentioned, and intended to be thereby granted, bargained, sold and assigned, with their and every of their appurtenances, unto the said J. G. and C. J. their heirs and assigns for ever, to the use of them the said J. G. and C. J. their heirs and assigns for ever, (subject nevertheless to such mortgage or mortgages, or other charges and incumbrances, if any such there were, as the same premises were subject to,) in trust nevertheless, and to and for the use of them the said J. G. and C. J. and of all the said creditors of the said Joseph Styles who had then already sought relief, or should thereafter in due time come in and seek relief, by virtue of the said commission, and to and for no other use, trust, intent or purpose whatsoever. And whereas, by an order made in the matter of the said Joseph Styles, bankrupt as aforesaid, by the Lord High Chancellor of Great Britain, bearing date on or about the — day of — last past, reciting [that John Buckley and George Greathead, two of the creditors of the said Joseph Styles, on behalf of themselves and the several other creditors of the said Joseph Styles, who had proved their debts under the said commission, did, on the — day of — last, prefer their petition to his Lordship, thereby praying (amongst other things), for the reasons therein contained, that the said J. G. and C. J. might be discharged from being assignees under the said commission, and that a new assignee or assignees might be chosen to act in their stead; and that the said J. G. and C. J. might join in executing an assignment of the said bankrupt's personal, and bargain and sale of his real estates, to such assignee or assignees so to be chosen and appointed; it was by the Lord High Chancellor ordered, that they the said J. G. and C. J. should be removed from being assignees of the estate and effects of the said Joseph Styles, the bankrupt; and that the major part of the commissioners in the above-mentioned commission named, should call a meeting of the creditors, for the purpose of proceeding to the choice of another assignee or assignees, in the place and stead of the said J. G. and C. J.; and that the said J. G. and C. J. should join in executing an assignment of the said bankrupt's personal estate, and a bargain and



sale of his real estates, to such new assignee or assignees so to be appointed," *reciting the order, in the past tense,*] "as in and by the said recited order, reference being thereunto had, will more fully and at large appear. And whereas, in pursuance of the said order, the major part of the commissioners in the said commission named, caused due notice to be given and published in the London Gazette, appointing the creditors of the said Joseph Styles to meet at the Court of Commissioners of Bankrupt, this present — day of — for the choice of a new assignee or assignees of the said bankrupt's estate and effects, in the room of said J. G. and C. J.: And whereas, at such meeting, the major part in value of the creditors of the said Joseph Styles present, who had proved debts under the said commission, amounting to twenty pounds or upwards, did nominate, elect, and choose the said L. M. and O. P. to be new assignees of the estate and effects of the said Joseph Styles, in the room of the said J. G. and C. J.: Now this indenture witnesseth, that, in pursuance of the said recited order, and in obedience thereto, and in consequence of the meeting held at the Court of Commissioners of Bankrupt as aforesaid, and for and in consideration of the sum of five shillings of lawful money of Great Britain, to them the said J. G. and C. J. in hand respectively paid by the said L. M. and O. P., at or before the sealing and delivery of these presents, the receipt whereof is hereby respectively acknowledged, and also for and in consideration of the covenants hereinafter contained, on the part and behalf of the said L. M. and O. P. their and every of their heirs, executors, and administrators, to be kept, done, and performed, they, the said J. G. and C. J. have, and each of them hath bargained and sold, and by these presents doth bargain and sell unto the said L. M. and O. P., and their heirs, all and singular the said freehold messuages, lands, tenements, and hereditaments, situate and being in the county of —, or elsewhere, in the Kingdom of Great Britain, late of him the said Joseph Styles, together with all and singular houses, outhouses, edifices, buildings, barns, stables, gardens, orchards, curtilages, meadows, feeding, trees, woods, underwoods, commons, common of pasture, ways, waters, water-courses, ponds, pools, paths, passages, and all other rights, liberties, privileges, profits, commodities, advantages, emoluments and appurtenances whatsoever, to the said messuages, lands, tenements, hereditaments, and premises so remaining unsold and undisposed of as aforesaid, or any part or parcel thereof, belonging or in any wise appertaining, or therewith or with any part thereof at any time heretofore, held, used, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof; and all the estate, right, title, interest,

use, trust, property, possession, benefit, equity of redemption, claim and demand whatsoever, of them the said J. G. and C. J., of, in and to the said hereditaments and premises hereinbefore bargained and sold, or intended so to be, or any part or parcel thereof, as assignees of the real estates of the said Joseph Styles as aforesaid. And the said commissioners, parties to these presents, for and in consideration of the sum of five shillings apiece of the like lawful money of Great Britain to them in hand also paid by the said L. M. and O. P. at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have and each and every of them hath ratified and confirmed, and by these presents do and each and every of them doth (as much as in them lieth and they lawfully may) ratify and confirm unto the said L. M. and O. P. and their heirs, the said freehold messuages, lands, tenements, and hereditaments, situate and being in the said county of —, or elsewhere, in the kingdom of Great Britain, late of him the said Joseph Styles, remaining unsold and undisposed of by the said J. G. and C. J., with their and every of their appurtenances, and hereinbefore bargained and sold, or intended so to be as aforesaid; to have and to hold the said messuages, lands, tenements, and hereditaments, and all and singular other the premises hereinbefore mentioned to be hereby bargained and sold, ratified, and confirmed, or intended so to be, and every part and parcel thereof, with their and every of their rights, members and appurtenances, unto the said L. M. and O. P. and their heirs, to the only proper use and behoof of the said L. M. and O. P. their heirs and assigns for ever, according to the right and interest of the said J. G. and C. J. therein, subject to such mortgage or mortgages, or other charges or incumbrances, (if any such there be,) as the same are legally charged with or liable to, in trust nevertheless, to and for the use, benefit, satisfaction and payment of them the said L. M. and O. P., and all other the creditors of the said Joseph Styles who have already sought, or shall in due time hereafter come in and seek, relief under the said commission, or in any renewed commission against the said Joseph Styles, and duly prove and ascertain their respective debts under the same, according to the directions and limitations of the said statute. And the said L. M. and O. P. do hereby for themselves severally and respectively, and for their several heirs, executors and administrators, and not jointly or the one of them for the other of them, but each of them for his own heirs', executors' and administrators' acts and deeds only, covenant, promise and agree to and with the said commissioners, parties to these presents, their heirs, executors and administrators in manner following, (that is to say,) that they the

said L. M. and O. P., their heirs and assigns, shall and will, with all convenient speed, use their best endeavours, by suits at law or otherwise, to recover and get possession of all and singular the said messuages, lands, tenements and hereditaments, hereinbefore bargained and sold, or mentioned or intended so to be, with their and every of their appurtenances, and shall and will, after recovery and possession had of the same or any part thereof, make sale and disposition thereof, and of every part thereof, with the like convenient speed, for the most money and best price they or any of them can or may obtain for the same; and farther that they the said L. M. and O. P., their heirs, executors, and administrators, shall and will, from time to time and at all times hereafter, upon a reasonable request or notice to them for that purpose given under the hands of the commissioners by the said commission or any renewed commission authorised as aforesaid or the major part of them, give and render unto the said commissioners or the major part of them, a just and true account of all and every such sum and sums of money or other satisfaction, which they the said L. M. and O. P., their heirs, executors or administrators respectively, shall or may have received, obtained or raised, by virtue of these presents or by means of the present deed of bargain and sale, out of the estate of the said Joseph Styles hereby bargained and sold; and all such monies or other satisfaction as shall appear to be so by them respectively received, had, obtained or raised as aforesaid, they the said L. M. and O. P. shall and will, (after all just allowances thereout deducted,) upon the like reasonable request, well and truly pay, satisfy and render, or cause to be paid, satisfied, and rendered, to them the said commissioners so authorised, or the major part of them, or as they or the major part of them shall direct or appoint under their hands, to the end the same monies or other satisfaction may be, by them the said commissioners in and by the said commission or any renewed commission authorised, or the major part of them, ordered, disposed, distributed, and divided, unto and amongst all and every the creditors of the said Joseph Styles who have already come in and sought relief, or shall hereafter in due time come in and seek relief, by virtue of the said commission, according to the limitations of the said statute therein mentioned as aforesaid, to the end the same monies and other satisfaction may be distributed and paid to the creditors seeking relief as aforesaid, proportionably, according to their several debts due and owing to them respectively from the said Joseph Styles, according to the order of dividend to be made by the said commissioners of the same; and lastly, that they the said L. M. and O. P. shall and will, from time to time, and at all times hereafter, well and sufficiently save, defend,

keep harmless and indemnified, as well the said commissioners, parties to these presents, as the other commissioners in and by the said commission named and authorised, or in any renewed commission to be named and authorised, and their heirs, executors and administrators, and every of them, and their and every of their bodies, goods, chattels, lands and tenements, and every of them, their and every of their messengers, agents, and servants, who have been by them or any of them employed in or about the execution of the said commission, of, from, and against all and all manner of action and actions, suits, troubles, charges, damages, and expenses whatsoever, that shall or may, at any time or times hereafter, arise happen or come unto them the said commissioners, or any or either of them, or any of their messengers, agents, servants, heirs, executors or administrators, for or by reason or means of the present deed of bargain and sale, or any other matter or thing by them or any or either of them, lawfully acted or done by virtue of the said recited commission, or by their or any or either of their lawfully intermeddling in the estate and effects of the said Joseph Styles, In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first herein written.

Signed, sealed and delivered by the within  
named — in the pre-  
sence of

\* \* \* See the note to the last precedent.

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*Advertisement that the new Assignees have been chosen.*

The commissioners in a commission of bankrupt awarded and issued against Joseph Styles, of — street, in the city of London, builder, dealer and chapman, do hereby give notice, that J. G. and C. J., late assignees of the estate and effects of the said bankrupt, [have been discharged from being assignees by an order of the right honourable the Lord High Chancellor of Great Britain," or "have lately died" or "become bankrupt], and that M. T. and C. L. are appointed assignees in their stead, [and that the said bankrupt's debtors are not to pay their debts to the assignees so removed as aforesaid.

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**SUPERSEDEAS.**

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*Supersedeas, Bankrupt not having committed an Act of  
Bankruptcy.*

*Petition.*

In the matter of Joseph Styles,  
a bankrupt.

To the Right Honourable the Lord High Chancellor of  
Great Britain.

The humble petition of the said Joseph Styles,  
Sheweth,

That a commission of bankrupt under the Great Seal of Great Britain, bearing date at Westminster, the —— day of ——, 1827, upon the petition of John Nokes, of —— ——, was awarded and issued against your petitioner, by the name and description of ——.

That your petitioner hath been declared a bankrupt by the major part of the commissioners in the said commission named.

That your petitioner hath not at any time committed any act of bankruptcy, within the true intent and meaning of the bankrupt laws.

Your petitioner therefore humbly prays your Lordship, that you will be pleased to order the said commission to be superseded, at the expense of the said John Nokes, the petitioning creditor, and that a writ of *supersedeas* may forthwith issue for that purpose ; and that the bond which has been entered into by him may be assigned to your petitioner, and that he may pay the costs of this application ; or that your Lordship will be pleased to make such other order in the premises, as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

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*Upon the hearing of a petition of this nature, the court will often direct an issue to try the fact ; and if the party who seeks to support the commission intends, on trial of the issue, to rely upon any other act of bankruptcy than those sworn to in support of the commission, the Chancellor will require him, previously to the trial, to give the bankrupt notice of the acts of bankruptcy on which he intends to rely, and the evidence he intends to produce to support them.*

*Form of the Notice.*

In the Common Pleas,

Between John Nokes, Plaintiff,  
and  
Joseph Styles, Defendant.

Take notice, that on the trial of this issue, the plaintiff intends to insist that the defendant did, on or before the date and issuing forth of the commission of bankruptcy against him, commit an act or acts of bankruptcy, by beginning to keep house, and by departing from his dwelling-house, and to prove the same as follows: John Ward, a witness to prove the same, being then a clerk to the said Joseph Styles, did, on the —— day of ——, 1827, receive orders from the said Joseph Styles, &c. *See ante*, 10—14.

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*Petition for Supersedeas, after a trial at Law.*

In the matter of Joseph Styles,  
a bankrupt.

To the Right Honourable the Lord High Chancellor of  
Great Britain

The humble petition of the said Joseph Styles,

Sheweth,

That a commission of bankrupt, under the Great Seal of Great Britain, bearing date at Westminster, the —— day of ——, 1827, upon the petition of John Nokes, of —— ———, was awarded and issued against your petitioner, by the name and description of ——.

Great Britain, bearing date at Westminster, the — day of —, 1827, upon the petition of John Nokes, of —, was awarded and issued against your petitioner, by the name and description of —.

That your petitioner hath been declared a bankrupt by the major part of the commissioners in the said commission named.

That the several persons whose names are hereunto subscribed, are all the creditors of your petitioner, who have proved or claimed any debt under the said commission, as by the certificate of the said commissioners, hereunto annexed, appears; and as all the said creditors of your petitioner are consenting that the said commission should be superseded, and for that purpose have signified their respective consents in writing to the prayer of this petition, at the foot hereof, as by affidavit also annexed appears.

Your petitioner therefore humbly prays your Lordship, that you will be pleased to order the said commission to be superseded, and that a writ of *Supersedeas* may forthwith issue for that purpose.

And your petitioner will ever pray, &c.

"We whose names are hereunder subscribed, do hereby most humbly testify and declare our consents to the prayer of the above petition, in case your Lordship will be pleased to grant the same. Witness our hands, this — day of —, 1827.

\* \* To be signed by the creditors. See i. p. 223.

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*Affidavit that the Creditors signed the same.*

In the matter of Joseph Styles,  
a bankrupt.

John Bett, of — street, in the city of London, gentleman, maketh oath and saith, that he was present on the — day of — last, and did see" [*here name the creditors*]." severally sign their names to a consent in writing, subscribed to the prayer of a petition of the said Joseph Styles, of —, directed and intended to be preferred to the Lord High Chancellor of Great Britain, most humbly praying that his Lordship will be pleased to order the commission of bankrupt, therein-mentioned to have

been awarded and issued against the said Joseph Styles, to be superseded, and that a writ of *supersedeas* might forthwith issue for that purpose, or to that effect. And this deponent further saith, that the names" [*here state them*] "signed and subscribed to the said consent in writing, are of the respective proper hand-writing of the said" [*here name the creditors.*]

John Bett.

Sworn at the Public Office, Southampton  
Buildings, this — day of — 1827,  
before me,

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*The Commissioners' Certificate.*

In the matter of Joseph Styles,  
a bankrupt.

To the Right Honourable the Lord High Chancellor of  
Great Britain.

We whose names are hereunto subscribed, being the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued and now in prosecution against Joseph Styles, of — street, in the city of London, builder, dealer and chapman, bearing date at Westminster the — day of — in the — year of the reign of his present Majesty, directed to —, do humbly certify to your Lordship, that we the major part of the said commissioners, on the — day of — aforesaid, having begun to put the said commission into execution, did find, that the said Joseph Styles did, before the date and suing forth of the said commission, become bankrupt, within the intent and meaning of the statute made and now in force concerning bankrupts, and did thereupon declare and adjudge him a bankrupt accordingly. And we further humbly certify to your Lordship, that we did meet, pursuant to notice in the London Gazette for that purpose, on —, the — day of the said month of —, for the proof of debts, and on —, the — day of — last, for the choice of assignees of the said bankrupt's estate and effects; but we, being satisfied at the said last mentioned meeting, that a petition would be presented for superseding the said commission, with the consent of all the creditors who had proved debts under the same, did thereupon adjourn the choice of assignees until —, the —

GG



day of — next, in order to give an opportunity of presenting the said petition. And we further humbly certify to your Lordship, that the said Joseph Styles hath duly surrendered himself to the major part of the commissioners in the said commission named, and that he hath not at any time been committed by the said commissioners. And we further humbly certify to your Lordship, that” [*here name the creditors who have signed the consent*] “are the only creditors of the said Joseph Styles, who have proved debts under the said commission. Witness our hands, this — day of —, in the year of our Lord, 1827.

\* \* *To be signed by the commissioners.*

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*Memorandum of signing the above Certificate.*

At the Court of Commissioners of Bankrupt,  
the — day of —, 1826.

Memorandum, that we whose names are hereunto subscribed, being the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued and now in prosecution against Joseph Styles, of — street, in the city of London, builder, dealer and chapman, met the day and year and at the place above mentioned, and, at the instance of all the said bankrupt's creditors under the said commission, made our certificate, and thereby certified to the Right Honourable the Lord High Chancellor of Great Britain, that we the said commissioners had declared the said Joseph Styles bankrupt, and that” [*here name the creditors*] “were the only creditors who had proved or claimed any debts under the said commission.

\* \* *To be signed by the commissioners.*

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*Supersedeas by consent of nine-tenths of Creditors accepting a Composition according to 6 Geo. 4. c. 16. s. 133, 134. See ante, i. p. 223.*

*Advertisement of Meeting for the purpose of accepting the Composition.*

The creditors who have proved their debts under a commission of bankrupt awarded and issued against Joseph Styles, of —

street, in the city of London, builder, dealer and chapman, are desired to meet on the first day of June next, at twelve o'clock at noon, at the Court of Commissioners of Bankrupt, Basinghall street, in the city of London, to decide upon accepting or refusing any offer of composition then and there to be made to them by the said Joseph Styles or his friends [*or for the second meeting*] to decide upon accepting or refusing such offer of composition as was made to the creditors assembled at a meeting held at, &c., on the first day of June last, by the said Joseph Styles or his friends.]

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*Petition for the Supersedeas.*

In the matter of Joseph Styles,  
a bankrupt.

To the Right Honourable the Lord High Chancellor of  
Great Britain.

The humble petition of the said Joseph Styles,  
Sheweth,

That a commission of bankrupt, under, &c., bearing date, &c., was awarded and issued against your petitioner, upon the petition of John Nokes, of, &c., which commission was directed to certain commissioners therein named, the major part of whom have found and declared your petitioner a bankrupt.

That your petitioner duly surrendered to the commissioners under the said commission, and on the — day of — 1827, your petitioner duly past his last examination.

That at a meeting of the creditors of your petitioner who had proved debts under the said commission, held at — on the — day of —, (whereof and of the purport whereof twenty-one days notice had been given in the London Gazette) nine-tenths in number and value of the creditors assembled at such meeting, who had proved debts respectively to the amount of £20 and upwards, being also nine-tenths in value of the said creditors then present who had proved debts under the said commission, agreed to accept the sum of 15s. in the pound upon their respective debts, payable in two instalments, namely, on the — day of —, and secured by the promissory notes of A. B. of, &c. and C. D. of, &c.

That at a second meeting of the creditors of your petitioner, held on, &c. at, &c. before the major part of the commissioners named in and authorized by the said commission, (whereof such notice as aforesaid had been previously given in the London Gazette) nine-tenths in number of the creditors then assembled who had proved debts to such amount as aforesaid, being also nine-tenths in value of the said creditors then present who had proved debts under the said commission, agreed to accept such composition as aforesaid.

Your petitioner therefore humbly prays that your Lordship would be pleased to order the said commission to be superseded, and that a writ of supersedeas do forthwith issue for that purpose.

And your petitioner will ever pray, &c.

We whose names are hereunto subscribed, being nine-tenths in number of the creditors who have proved debts under the said commission to the amount respectively of £20 and upwards, and present at a meeting held at, &c., on the — day of — 1827, before the major part of the commissioners named in and authorized by the said commission, and being also nine-tenths in value of all the creditors present at such meeting, do hereby most humbly testify our acceptance of the offer of composition in the above petition mentioned. As witness our hands, this — day of — 1827.

\* \* \* *To be signed by the creditors, and there must also be an affidavit of the signatures of the creditors, ante, p. 144.*

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*Certificate of the Commissioners under Lord Eldon's general order, ante, i. p. 224.*

In the matter of Joseph Styles,  
a bankrupt.

To the Right Honourable the Lord High Chancellor of  
Great Britain.

We whose names are hereunto subscribed and set, being the major part of the commissioners named in and authorized by a commission of bankrupt awarded and issued against Joseph

Styles of, &c. do hereby certify to your Lordship, that the major part of the said commissioners having begun to put the said commission into execution, did on the — day of — last, find that the said Joseph Styles did, before the date and suing forth the said commission, become bankrupt within the true intent and meaning of the statute made and now in force concerning bankrupts, and that they did therefore adjudge and declare him a bankrupt accordingly: and we the said commissioners do further certify to your Lordship, that the said Joseph Styles, on the — day of — last, duly surrendered to the said commissioners and passed his last examination, and that at a meeting of the creditors of the said Joseph Styles who had proved debts under the said commission, held at — on the — day of — last, (whereof and of the purport whereof twenty-one days previous notice had been given in the London Gazette) nine-tenths in number of the creditors assembled at such meeting, who had proved debts respectively to the amount of £20 and upwards, being also nine-tenths in value of the said creditors then present who had proved debts under the said commission, agreed to accept the sum of 15s. in the pound upon their respective debts, payable by three instalments, on the — day of —, &c. and secured by the promissory notes of A. B. of, &c. and C. D. of, &c. And we further certify to your Lordship, that at a second meeting of the creditors of the said Joseph Styles, held this day before us the said commissioners, pursuant to your Lordship's general order, at, &c. (whereof and of the purport whereof such notice as aforesaid had been previously given in the London Gazette) we the said commissioners, by the depositions of witnesses and other good proof, upon oath before us this day had and taken, have ascertained that the requisites of the statute made and passed in the sixth year of the reign of his present Majesty, intituled, "An act to amend the laws relating to bankrupts," have been duly performed previous to the holding of this present meeting, in regard to the offer of such composition by the said Joseph Styles, and such acceptance thereof by the creditors in manner aforesaid; and it also appears to us at this meeting, that nine-tenths in number of the creditors now present who have proved debts under the said commission, have agreed to accept such composition as aforesaid. And we further certify to your Lordship, that all the creditors who have proved debts to the amount of £20 and upwards under the said commission are sixty-three in number, and that their debts amount to the sum of £1876 2s. 6d., and that the creditors now assenting to such composition as aforesaid are fifty-nine in number, and that their debts amount to £1710 1s. 0d.; and we further certify, that no sale has yet

been made of any part of the said bankrupt's estate and effects. Witness whereof our hands, this — day of — in the year of our Lord 1827.

\*.\* *To be signed by the Commissioners.*

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*Memorandum of the Commissioners having executed the above Certificate.*

At the Court of Commissioners of Bankrupt,  
the 20th day of June, 1827.

Memorandum, that we whose names are hereunto subscribed, being the major part of the commissioners named and authorized in and by a commission of bankrupt (*as before*), met on the day and year and at the place above mentioned, pursuant to notice in the London Gazette, for the purpose of inquiring and ascertaining whether the requisites of the statute made and passed in the sixth year of the reign of his present Majesty, intituled, "An act to amend the law relating to bankrupts," had been duly performed in regard to a compensation of 15s. in the pound previously offered by the said bankrupt to the creditors who had proved their debts under the said commission, and that we being satisfied thereof, and it also appearing to us that nine-tenths in number of the creditors now present, who have proved debts respectively to the amount of £20 and upwards, and nine-tenths in value of the creditors now present who have proved debts under the said commission, have agreed to accept such composition as aforesaid, we the said commissioners thereupon made our certificate to the Right Honourable the Lord Chancellor, and thereby duly certified to his Lordship the several matters aforesaid, as well as certain other matters relating thereto pursuant to his Lordship's general order. Witness our hands, this — day of — 1827.

\*.\* *To be signed by the Commissioners.*

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*The Writ of Supersedeas.*

George the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith.

To our trusty and well-beloved A. B., C. D., E. F. and G. H., esquires, and I. K., gentleman, greeting : Whereas we being informed that Joseph Styles, of — street, in the city of London, builder, dealer and chapman, did become bankrupt within the intent and meaning of the statute made and now in force against bankrupts ; and we, minding the due execution of the said statute, did, by our commission under the Great Seal of Great Britain, bearing date at Westminster, the — day of — in the — year of our reign, name, assign, appoint, constitute and ordain you our special commissioners, thereby giving” [*&c. here recite the original commission, ante, p. 6, to the words “diligence and effect,” and then thus*] : “ Now, forasmuch as the said Joseph Styles, the bankrupt, by his humble petition, exhibited to our Lord High Chancellor of Great Britain, for the reasons therein contained, prayed that the said commission might be superseded ; whereunto we graciously inclining, do, by these presents, will and command you, and every of you, to stay and surcease all further proceedings upon the said commission, and that you supersede the same accordingly, as our special trust is in you reposed. Witness ourself at Westminster, the — day of —, in the — year of our reign.

Lyndhurst.

\* \* See i. p. 220—229. *As soon as the writ of supersedeas is sued out, a copy must be personally served upon each of the commissioners, the original being at the same time shewn to them. And lastly, cause to be inserted in the Gazette, the following*

*Advertisement of the Commission being superseded.*

Whereas a commission of bankrupt, bearing date on or about the — day of — 1826, was awarded and issued against Joseph Styles, of — street, in the city of London. This is to give notice, that the said commission is, under the Great Seal of Great Britain, superseded.

\* \* *This advertisement is not actually necessary ; but the bankrupt always, for his own satisfaction, has it inserted.*

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## PROCEDENDO.

*Writ of Procedendo, directing the Commission to be proceeded in after the issuing of a Supersedeas.*

George the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, &c. To our trusty and well-beloved A. B., C. D., E. F., G. H., esquires, and I. K., gentleman, greeting: Whereas we being informed that Joseph Styles, builder, dealer and chapman, using and exercising the trade of a builder, about the — day of — did become bankrupt, within the intent and meaning of the statute made and now in force concerning bankrupts, to the intent to defraud and hinder John Nokes of, &c., and William Chapman of, &c., and others his creditors of their just debts and duties to them due and owing, and we minding the due execution of the said statute, made concerning bankrupts, did, by our commission under our Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the — day of — in the seventh year of our reign, name, appoint, constitute and ordain you our special commissioners, thereby giving full power and authority [*&c. continuing to recite the original commission, as p. 6, ante, to the words "diligence and effect"*]: and whereas John Nokes of, &c., by his humble petition, exhibited to our Lord High Chancellor of Great Britain, for the reasons therein contained, prayed that the said commission might be superseded, whereunto we graciously inclining, did, by our writ of supersedeas, under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the — day of —, in the eighth year of our reign, will and command you, and every of you, to stay and surcease all further proceedings upon the said commission, as our special trust was in you reposed. Now, forasmuch as the said —, by his humble petition, afterwards exhibited to our Lord High Chancellor of Great Britain, for the reasons therein contained, have prayed that our said commission might be proceeded in as if the same had not been superseded, whereunto we are graciously inclined: we do therefore, by these presents, will and command you four, or three of you, to proceed upon the said commission, and to put the same in execution in all respects as if the same had not been superseded, as our special trust is in you reposed. Witness ourself at Westminster, the — day of —, in the 8th year of our reign.

\* \* This writ should be served upon the Commissioners as before directed, as to a supersedeas, and a similar notice should be published in the Gazette. See ante, p. 151.

RENEWED COMMISSION.

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*Petition for a renewed Commission.*

To the Right Honourable the Lord High Chancellor of  
Great Britain.

The humble petition of John Nokes, the assignee of Joseph  
Styles, a bankrupt.

Sheweth,

That upon application of your petitioner, a commission of  
bankrupt, dated the — day of —, in the 59th year of the  
reign of his late Majesty King George the Third, was awarded  
against the said Joseph Styles, of — street, in the city of  
London, builder, dealer and chapman, directed unto —, —,  
whereupon the said Joseph Styles was declared bankrupt, and  
several proceedings have been had thereon; that — three  
of the said commissioners are since dead, by reason whereof the  
said commission cannot be further proceeded upon without being  
renewed.

Your petitioner therefore humbly prays your Lord-  
ship that the said commission may be renewed.

And your petitioner shall ever pray, &c.

\* \* \* *This petition is lodged at the Secretary of Bankrupt's Office  
by the Solicitor, and is not annexed (as the original petition) to  
the commission.*

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*Renewed Commission on the Death of Commissioners.*

George the Fourth, by the Grace of God, of the United King-  
dom of Great Britain and Ireland King, Defender of the Faith,  
&c. To our trusty and well-beloved A. B., C. D., E, F., G. H.,  
and I. J., esquires, greeting [*here recite the original commission  
to "diligence and effect," as ante, p. 6, then add*]: Now, foras-  
much as John Nokes of, &c., by his humble petition, exhibited  
to our Lord High Chancellor of Great Britain, for the reasons



therein contained, prayeth that the said commission might be renewed, whereunto we graciously inclining, do, by these presents, name, assign, appoint, constitute and ordain you our special commissioners, hereby giving full power and authority unto you four, or three of you, to proceed according to the said statute now in force concerning bankrupts, not only concerning the said bankrupt, his body, lands, tenements, freehold and customary goods, debts and other things whatsoever, but also concerning all other persons who, by concealment, claim or otherwise, do or shall offend touching the premises, or any part thereof, contrary to the true intent and meaning of the said statute, and to do and execute all and every things and thing whatsoever, as well for and towards satisfaction and payment of the said creditors, as towards and for all other intents and purposes according to the ordinance and provision of the said statute, willing and commanding you four, or three of you, to proceed to the execution and accomplishment of this our commission, according to the true intent and meaning of the same statute, with all diligence and effect, as our special trust is in you reposed. Witness ourself at Westminster, the — day of —, in the — year of our reign.

Lyndhurst.

\* \* \* *On bespeaking this renewed commission, you leave at the Secretary of Bankrupt's Office 12s. and pay at the Patentee Office £3: 6s. 3d. which, with 2s. for a tin box, is the whole amount to be paid.*

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*Advertisement for the choice of Assignees under a renewed Commission.*

The commissioners, in a renewed commission of bankrupt, awarded and issued against Joseph Styles, of, &c., intend to meet on the 7th day of June next, at one o'clock in the afternoon, at the Court of Commissioners of Bankrupt, Basinghall-street, in the city of London, in order to proceed to the choice of an assignee or assignees of the said bankrupt's estate and effects, when and where the creditors who have not already proved their debts are to come prepared to prove the same, and vote in such choice accordingly.

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## PETITIONS AND ORDERS.

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### *General form of Petitions.*

In the matter of ———  
a bankrupt.

To the Right Honourable the Lord High Chancellor  
of Great Britain.

The humble petition of ———

Sheweth,

That a commission of bankrupt" [*&c. stating the commission and proceedings shortly ; and stating the facts upon which the prayer of the petition is grounded, particularly and with sufficient certainty*]: " as by the affidavits of your petitioner and others appears.

Your petitioner therefore humbly prays your Lordship that" [*stating fully and explicitly the relief sought for by the petitioner*] ; or that your Lordship will be pleased to make such other order in the premises, as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

Signed by the above named ———, in  
the presence of T. L., Temple, [the soli-  
citor presenting this petition," or " at-  
torney," or " solicitor," or " agent for the  
above named ——— in the matter of  
this petition." See i. p. 233—236.] }

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### *Affidavit to verify the same.*

In the matter of Joseph Styles,  
a bankrupt.

John Nokes, of ———, merchant, and William Tilson, of  
———, solicitor to the commission against the said Joseph Styles,

severally make oath and say; and first, this deponent, John Nokes, for himself saith, that" [&c.] "And this deponent William Tilson, for himself saith, that" [&c.] And these deponents, John Nokes and William Tilson, further say, that" [&c.]

Sworn at the Public Office, Southampton  
Buildings, this — day of — 1827,  
before me, } John Nokes.  
William Tilson

*See the practice as to petitions and affidavits, &c., i. p. 233—240.*

*Affidavit of Service of the Petition.*

In the matter of Joseph Styles,  
a bankrupt.

W. R. of —, clerk to William Tilson, of —, solicitor to the commission against the said Joseph Styles, maketh oath and saith, that he did on the — day of — instant, personally serve — and — respectively with a petition and order thereon, a true copy of which is hereunto annexed, by delivering true copies of the same to the said — and — respectively, and at the same time shewing to them the said original petition and order.

W. R.

Sworn at the Public Office, Southampton  
Buildings, this — day of — 1827,  
before me,

*Order thereon.*

Wednesday, the — day of — 1827.

Lord Chancellor.

Whereas John Nokes did, on the — day of — instant, prefer his petition to me, shewing that" [&c. recising the petition]; "and therefore praying that" [&c. recising the prayer of it]; "whereupon all parties concerned were ordered to attend me on the matter of the said petition. Now, upon hearing the said petition and several affidavits read, and upon

hearing counsel upon the part of the petitioner, and also on the part of the said ——— (no person attending on the part of the said ———, although he was duly served with the said petition and my order thereon, as by the affidavit of W. R. fully appears), I do order that" [*&c. stating the order in the terms of the prayer of the petition, if granted generally, or with such alterations as the Chancellor may have made in it.*]

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*Petition by Bankrupt, to enlarge the Time for his Surrender and last Examination.*

In the matter of Joseph Styles,  
a bankrupt.

To the Right Honourable the Lord High Chancellor of  
Great Britain.

The humble petition of the said Joseph Styles,

Sheweth,

That a commission of bankrupt under the Great Seal of Great Britain, bearing date at Westminster, the ——— day of ———, 1827, upon the petition of John Nokes, of ———, was awarded and issued against your petitioner, by the name and description of ———.

That your petitioner hath been declared a bankrupt by the major part of the commissioners in the said commission named.

That your petitioner, by summons under the hands of the major part of the said commissioners, and also by notice in the London Gazette of ——— the ——— day of ———, 1827, was required to surrender himself to the said commissioners, or the major part of them, at the Court of Commissioners of Bankrupt, London, to be examined by them, on the ——— and ——— days of the said month of ——— respectively, at eleven of the clock in the forenoon, on each of the said days, touching the disclosure and discovery of his estate and effects; and on the 5th day of ——— next, your petitioner was, by such summons and notice, required to finish his examination under the said commission.

That your petitioner did surrender himself to the said commissioners on the said ——— and ——— days of ——— last, and submitted to be examined touching the disclosure and discovery of his estate and effects, and conformed himself to the act of parliament made and now in force concerning bankrupts.

That your petitioner is preparing and setting his affairs, in order to make a full and true disclosure and discovery of all his estate and effects ; but your petitioner finds his accounts so very long, intricate, and perplexed, that he cannot possibly finish the same by the time limited by the said commissioners' summons and notice respectively for that purpose as aforesaid.

Your petitioner therefore humbly prays your Lordship, that you will be pleased to order, that the time for your petitioner's surrendering himself to the commissioners in the said commission named, or the major part of them, and for fully disclosing and discovering his estate and effects, and finishing his last examination under the said commission, as the law in such cases requires, be enlarged for the space of *forty-nine* days, to be computed from the said — day of —, 1827.

And your petitioner will ever pray, &c.

*\* \* \* This and the following petition require no affidavit ; they are received at the bankrupt office, and the prayer granted as of course. See the note at the end of the next form.*

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*The like by the Assignees.*

In the matter of Joseph Styles,  
a bankrupt.

To the Right Honourable the Lord High Chancellor of  
Great Britain.

The humble petition of J. G. and C. J., assignees of the estate and effects of Joseph Styles, late of — street, in the city of London, builder, dealer and chapman, a bankrupt,

Sheweth,

That a commission of bankrupt, under the Great Seal of Great Britain, bearing date at Westminster, the — the day of — last, upon the petition of John Nokes, of —, was awarded and issued against the said Joseph Styles.

That the said Joseph Styles hath been declared bankrupt by the major part of the commissioners in the said commission

named ; and by summons under their hands, and also by notice in the London Gazette, on — the — day of —, 1827, was required to surrender himself to the said commissioners, or the major part of them, at the Court of Commissioners of Bankrupt, London, to be examined by them on the — and — days of the said month of — respectively, at four of the clock in the afternoon, on each of the said days, touching the disclosure and discovery of his estate and effects ; and on the — day of — next, the said bankrupt was, by such summons and notice, required to finish his examination under the said commission.

That the said bankrupt hath not as yet surrendered himself to the commissioners in the said commission named, or to the major part of them, at the said two first meetings already had under the said commission, or at either of them. But the said bankrupt was, at the time of the issuing of the said commission and now is, at Paris, in the kingdom of France, and was not until lately aware that any such commission had issued against him, as your petitioners have been informed and verily believe. That your petitioners also are informed that the said bankrupt intends to surrender himself to the said commission, but will not be able to arrive in London by the — day of — aforesaid.

Your petitioners therefore humbly pray your Lordship, that you will be pleased to order the time for the said bankrupt's surrendering himself to the commissioners in the said commission named or the major part of them, and for fully disclosing or discovering his estate and effects, and finishing his examination under the said commission, as the law in such cases requires, may be enlarged for the space of forty-nine days, to be computed from the said — day of — next.

And your petitioner will ever pray, &c.

\* \* Notice of the order for enlargement must be given to the commissioners, by personally delivering, or leaving at their places of abode, a copy of the petition and order. See ante, p. 82 ; and see the form of the advertisement, ante, p. 83. See the note at the end of the last form.

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*Petition for leave to prove Debts, and for staying the Bankrupt's Certificate.*

In the matter of Joseph Styles,  
a bankrupt.

To the Right Honourable the Lord High Chancellor of  
Great Britain.

The humble petition of ————,

Sheweth,

That on or about the ——— day of ——— last, a commission of bankrupt under the Great Seal of Great Britain was awarded and issued against Joseph Styles, late of ——— street, in the city of London, builder, dealer, and chapman, and divers proceedings were had thereupon, and a certificate of four parts in five in number and value of the creditors of the said bankrupt, who have respectively proved debts to the amount of £20 or upwards under the said commission, has been signed by the said creditors, and also by the acting commissioners in the said commission named, and the same now lies before your Lordship for confirmation and allowance.

That your petitioner is a creditor of the said bankrupt for the sum of £500, for goods sold and delivered by him to the said bankrupt before the date and suing forth of the said commission.

That the said commission was executed in the country, and your petitioner had no notice thereof until very lately; and has therefore been prevented from proving his debt under the same, and has had no opportunity of making an inquiry into the bankrupt's conduct, whether he has acted justly to his creditors or not.

That by your petitioner not having proved his debt as aforesaid, the said consent of four-fifths in number and value of the said bankrupt's creditors was obtained, which could not have been effected without your petitioner's concurrence and consent, had he been able to have proved his debt as aforesaid.

Your petitioner therefore humbly prays your Lordship, that you will be pleased to grant an order for your petitioner to be at liberty to call a meeting of the commissioners acting under the said commission so issued against the said Joseph

Styles, in order that your petitioner may prove his debt under the same, and that in the mean time the allowance and confirmation of the said bankrupt's certificate may be stayed, and that your petitioner may be at liberty to assent to, or dissent from, the allowance of the said bankrupt's certificate, and for that purpose that the said certificate may be sent back to the commissioners in the said commission named to re-certify unto your Lordship ; or that your Lordship may be pleased to make such other order in the premises, as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

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*Petition by Assignee, to have Solicitor's Bill taxed, and that he deliver up Proceedings, &c.*

In the matter of Joseph Styles,  
a bankrupt.

To the Right Honourable the Lord High Chancellor of  
Great Britain.

The humble petition of ———, one of the assignees of  
Joseph Styles, late of ——— street, in the city of London,  
builder, dealer, and chapman, a bankrupt,

Sheweth,

That on or about the ——— day of ——— last, a commission of bankrupt, under the Great Seal of Great Britain, was awarded and issued against the said Joseph Styles, who was thereupon duly found and declared a bankrupt ; and your petitioner was thereupon chosen sole assignee of his estate and effects, and the usual assignment was made to him accordingly.

That your petitioner employed T. L. of ———, solicitor, to act as the solicitor under the said commission : but your petitioner is now desirous of changing the solicitor, and of employing another person in that capacity ; and he has applied to the said



**T. L.** to deliver up the proceedings under the said commission, and other papers in his custody, offering at the same time to pay his bill of fees as settled by one of the masters of the Court of Chancery, which the said **T. L.** hath refused to do.

Your petitioner therefore humbly prays your Lordship, that the said **T. L.** may be ordered forthwith to deliver to your petitioner his bills of fees and disbursements, as solicitor to the said commission, signed by him ; and that such bill, when delivered, may be referred to one of the masters of the High Court of Chancery, to be taxed, your petitioner hereby offering to pay the said **T. L.** what shall appear to be due or owing to him, on the taxation of such bill ; and that the said **T. L.** may account before the said master for such sums of money as he has received on account of the said bankrupt's estate, and be directed to pay to your petitioner what, if any thing, shall appear to be due on the balance of his account ; and that upon payment to the said **T. L.** of what shall appear to be due to him, on the taxation of his said bill, he may be ordered to deliver up to your petitioner the said commission of bankrupt, the proceedings under the same, and all deeds, books, papers, and writings relating thereto ; or that your Lordship will please to make such other order in the premises, as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

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*Petition by the Solicitor, that the Assignees may pay his Bill.*

In the matter of Joseph Styles,  
a bankrupt

To the Right Honourable the Lord High Chancellor of  
Great Britain.

The humble petition of T. L. of —, solicitor,

Sheweth,

That on or about the — day of — last, a commission of bankrupt under the Great Seal of Great Britain was awarded and issued against Joseph Styles, late of — street, in the city of London, builder, dealer and chapman, and he was thereupon duly found and declared a bankrupt by the major part of the commissioners in the said commission named.

That J. G. of —, and C. J. of —, were chosen assignees of the said bankrupt's estate and effects, and the usual assignment made to them by the major part of the said commissioners.

That the said J. G. and C. J. as assignees as aforesaid employed your petitioner to act as the said solicitor under the said commission; and that your petitioner accordingly acted as such solicitor, and did all the business necessary to be done by him as such solicitor.

That your petitioner delivered to the said J. G. and C. J. his bill of costs for the business so done by him as aforesaid, and gave them notice in writing that the same would be taxed by a master of this honourable court on — the — day of — last; and the same was accordingly taxed by such master, at the time last aforesaid, at the sum of £83 : 16 : 10.

That your petitioner hath since shewn to the said J. G. and C. J. the said taxation, and demanded of them severally the amount thereof, which they have hitherto neglected to pay unto your petitioner :

Your petitioner therefore humbly prays your Lordship, that you will be pleased to order the said assignees forthwith to pay your petitioner the amount of the said bill of costs so taxed by the said master as aforesaid.

And your petitioner will ever pray, &c.

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**JOINT AND SEPARATE COMMISSIONS.**

*In the case of separate commissions, the forms are the same as already noticed.*

*In the case of joint commissions, the forms are also the same; except that where the bankrupts are named together, they are described thus: "Joseph Styles and Samuel Styles, of —— street, in the city of London, builders, dealers, chapmen, and co-partners;" where they are described separately, then thus: "Joseph Styles, against whom, together with Samuel Styles, (by the names and descriptions of Joseph Styles and Samuel Styles, of —— street, in the city of London, builders, dealers, chapmen, and co-partners) this commission of bankrupt is awarded and issued," &c.*

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*Petition to allow Joint Creditors to prove under separate Commission.*

**In the matter of Joseph Styles,  
a bankrupt.**

**To the Right Honourable the Lord High Chancellor of  
Great Britain.**

**The humble petition of —— ———, of ——, in the city of London, merchant, joint creditor of the said Joseph Styles, and Samuel Styles his late partner, on behalf of himself and all other the joint creditors of the said Joseph and Samuel Styles,**

**Sheweth,**

**That previously to the —— day of —— last, the said Joseph Styles and Samuel Styles carried on business in partnership as builders, and became indebted to your petitioner and other persons in respect of such co-partnership.**

**That there is joint property of the said Joseph Styles and Samuel Styles.**

**That on or about the —— day of —— last, a commission**

of bankrupt was issued against the said Joseph Styles, under which he was declared bankrupt ; and that the assignees chosen and appointed under the said commission have taken possession of such joint property.

That your petitioner is informed, and believes, that the said Samuel Styles is insolvent," or " that he is gone abroad, and resides out of the jurisdiction of this honourable court.

Your petitioner therefore humbly prays your Lordship, that you will be pleased to order that your petitioner and all other joint creditors of the said Joseph and Samuel Styles, may be at liberty to prove their debts under the commission against the said Joseph Styles, and that distinct accounts be kept of the joint and separate estates ; and that the costs of this application be paid out of the joint estates ; or that your Lordship will be pleased to make such further order as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

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*Order for Dividend under a Joint Commission.*

*Where there are separate and joint estates, and distinct accounts are to be kept, it is better, not only to keep the accounts of the different estates distinct, but to make the orders for the dividends also distinct, specifying the estate out of which each dividend is made. They are sometimes included in the same order ; but this is not nearly so plain or so intelligible a mode as that here recommended.*

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*Certificate of the Commissioners, under Lord Apsley' Order.*

To the Right Honourable the Lord High Chancellor of  
Great Britain.

We whose names are hereunto subscribed, being the major part of the commissioners named and authorised in and by a commission of bankrupt awarded and issued against Joseph

Styles, of — street, in the city of London, builder, dealer and chapman, bearing date at Westminster, the — day of —, in the — year of the reign of his present Majesty, directed to —, do, in pursuance of an order made in bankruptcy, bearing date on or about the 14th day of February, in the year of our Lord 1774, humbly certify to your Lordship, that the said Joseph Styles was, at the time of his bankruptcy, in partnership with Samuel Styles, in the trade of a builder, and that the said partnership was at the date of the said commission ;” [or “ that the same was finally dissolved, by mutual consent, on the — day of — last,” or, “ by the articles of agreement thereof expiring on the — day of — last.] And we further humbly certify to your Lordship, that a separate commission of bankrupt was awarded and issued before the issuing of the present commission, and is now depending and in prosecution against the said Joseph Styles. And we further humbly certify to your Lordship, that the said Joseph Styles, on or about the — day of —, 1820, obtained his certificate, duly allowed and confirmed, under the said separate commission. In witness whereof, we have hereunto set our hands, this — day of —, in the — year of the reign of our Sovereign Lord George the Fourth, and in the year of our Lord 1827.

\* \* *To be signed by the commissioners.*

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*Memorandum of having signed such Certificate.*

At the Court of Commissioners of Bankrupt,  
this 20th day of June, 1827.

Memorandum, we whose names [*&c. as in the last form, to the word “ Majesty”*] did, at the time and place aforesaid, sign our certificate to the Lord High Chancellor of Great Britain, in pursuance of an order made in bankruptcy, bearing date the 14th day of February, 1774.

\* \* *To be signed by the commissioners.*

*It is no ground for staying a certificate under a second commission, that the commissioners have neglected to certify the former bankruptcy under this order. Ex p. Black, 1 Rose, 60.*

## COMMISSIONS AGAINST MEMBERS OF PARLIAMENT.

### *Act of Bankruptcy.*

*For the form of the deposition as to act of bankruptcy, under the 6th Geo. 4. c. 16. § 10, see p. 10, ante. The following is the form of the deposition as to act of bankruptcy, under the 11th section of the statute.*

T. L., of New Inn, in the county of Middlesex, gentleman, and John Nokes, of — street, in the city of London, merchant, being severally sworn and examined, at the time and place above mentioned, before the major part of the commissioners named in and authorized by a commission of bankrupt issued and now in prosecution against Joseph Styles, of — street, in the city of London, merchant, severally make oath and say :—And first, this examinant, T. L., for himself saith, that on the — day of —, he, as the attorney, and in obedience to the instructions of the said John Nokes, instituted a suit in the High Court of Chancery, in which the said John Nokes was plaintiff, and the said Joseph Styles was defendant (the said Joseph Styles having privilege of parliament); and that certain proceedings were had in the said suit, and that a decree [*or order*] was made and pronounced therein, bearing date the — day of —, [*or presented a petition in the matter of —, a bankrupt, or a lunatic, to the Lord High Chancellor, wherein an order was made, bearing date the — day of —,]* whereby the said Joseph Styles was ordered to pay the sum of £— to —; and that this examinant, on the — day of — now last past, served him, the said Joseph Styles, personally with a copy of such decree [*or order*], and that the said Joseph Styles did, to the belief of the examinant, disobey such decree [*or order*], inasmuch as he did not then pay, nor has he since paid, the said sum of £— to —. And this examinant further saith, that, pursuant to the direc-

tions of an Act of Parliament, made and passed in the sixth year of the reign of his present Majesty King George the Fourth, intituled, "An Act to amend the laws relating to bankrupts," he, this examinant, did, as such attorney to the said John Nokes, and in obedience to his instructions, apply to the High Court of Chancery, to fix a peremptory day for the payment of the said sum of £——, pursuant to the terms of such decree [or order]; and that in consequence of such application, and on the —— day of ——, an order was pronounced in the said cause [or bankruptcy, or lunacy], whereby the —— day of —— was fixed or appointed for that purpose; and that, on the —— day of ——, he, this examinant, did personally serve the said Joseph Styles with a copy of such last-mentioned order: And this examinant, John Nokes, for himself saith, the said Joseph Styles did not pay, or cause to be paid, the said sum to him, the said John Nokes, on or before, or since the —— day of ——, appointed for payment of the same, and pursuant to the terms of the said order; but that the said Joseph Styles wholly omitted to pay the said sum of £——, on the —— day of ——, according to the tenor of the order so made as aforesaid.

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*Form of Commissioner's Certificate to the Speaker of the House of Commons, under stat. 57 Geo. 3. c. 144. § 2. See ante, i. p. 299.*

To the Right Honourable the Speaker of the  
House of Commons.

At the Court of Commissioners of Bankrupt,  
this —— day of June, 1827.

We, whose names are hereunto subscribed, being the major part of the commissioners named in and authorized by the commission of bankrupt awarded and issued against Joseph Styles, of —— street, in the city of London, merchant, do hereby certify to the Right Honourable the Speaker of the House of Commons, that the said commission of bankrupt, under the Great Seal of the United Kingdom of Great Britain and Ireland, grounded upon the law now in force concerning bankrupts, bearing date at Westminster, the —— day of —— last, is issued

against the said Joseph Styles, directed as well to us as to A. B. and C. D., Esquires ; and that, although twelve calendar months have expired since the issuing of the said commission, that the same hath not been superseded, nor have the debts under the same been satisfied, according to the ordinances and provisions of an Act of Parliament made and passed in the fifty-second year of the reign of his late Majesty King George the Third, intituled, “ An Act to suspend and finally vacate the seats of Members of the House of Commons who shall become bankrupts, and who shall not pay their debts in full within a limited time.”

\* \* \* *To be signed by the Commissioners.*

*The other forms are the same as in ordinary cases of bankruptcy. Except that the bankrupt, being a member of parliament, cannot be committed or arrested upon a warrant, unless in cases made felony by the statute. See 6 Geo. 4. c. 16. s. 9. i. p. 298, ante.*



## BILLS OF COSTS.

*Solicitor's Bill of Costs to the Choice of Assignees.*

	£	s.	d.
Taking instructions for commission . . . . .	0	13	4
Attending and examining witnesses as to trading and act of bankruptcy . . . . .	0	13	4
Attending to search if prior docket struck . . . . .	0	6	8
Paying search . . . . .	0	1	0
Drawing and engrossing affidavit of debt and oath . . . . .	0	11	6
Attending to get same sworn . . . . .	0	6	8
Attending to bespeak commission . . . . .	0	6	8
Drawing and ingrossing petition for commission . . . . .	1	1	0
Paid office bill for commission—( <i>Here charge the amount of what has been paid at the secretary's and patentee's offices, (ante, p. 4, 6,) and produce the bills to the Commissioners as vouchers.</i> )			
Paid witnesses their travelling, or other necessary expenses . . . . .			
<i>These must be the witnesses summoned to give evi- dence. If they reside, and are to give evi- dence within the bills of mortality, 1s. is suffi- cient. Compensation for loss of time is allowed to medical men and attornies only; but if the act of bankruptcy is proved by any officer of a prison, he is allowed £1 : 1s. for his attend- ance.</i>			
Solicitor's fee on suing out commission . . . . .	1	0	0
Paid commissioners on opening the commission, . . . . .	3	0	0
Solicitor's fee . . . . .	1	0	0
Provisional assignment ( <i>when actually necessary</i> ) . . . . .	2	0	0
Counterpart thereof . . . . .	2	0	0
Parchment, ( <i>no stamp duty.</i> ) . . . . .	0	10	0
Paid commissioners executing the same, . . . . .	3	0	0
Solicitor's fee, ( <i>i. e. taking instructions, 13s. 4d.; attending execution, 6s. 8d.</i> ) . . . . .	1	0	0
Provisional bargain and sale ( <i>when necessary</i> ) . . . . .	2	0	0
Counterpart thereof . . . . .	2	0	0
Parchment ( <i>no stamp duty</i> ) . . . . .	0	10	0

# Bills of Costs.

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	£	s.	d.
Paid commissioners executing the same . . . . .	3	0	0
Solicitor's fee . . . . .	1	0	0
Paid commissioner for acknowledging . . . . .	0	10	6
Attending to get same enrolled . . . . .	0	6	8
Paid fees of enrolment . . . . .			
<i>These vary according to the court where enrolled, and the number of rolls, see p. 67. ante.</i>			
Paid commissioners, first public meeting . . . . .	3	0	0
Solicitor's fee . . . . .	1	0	0
Filling up and signing memorandum and proof of debts to file with registrar . . . . .	0	3	4
<i>(This is only when the public meeting is held at the Court of Commissioners. See 1 &amp; 2 Geo. 4. c. 115.)</i>			
Paid commissioners, second public meeting . . . . .	3	0	0
Solicitor's fee . . . . .	1	0	0
Filling up and signing memorandum and proof of debts to file with registrar, <i>see supra</i> . . . . .	0	3	4
Assignment . . . . .	2	0	0
<i>(If after provisional, 10s. extra.)</i>			
Counterpart . . . . .	2	0	0
<i>(If after provisional, 10s. extra.)</i>			
Parchment, <i>(no stamp duty.)</i> . . . . .	0	10	0
Paid commissioners executing the same . . . . .	3	0	0
Solicitor's fee . . . . .	1	0	0
Bargain and sale, <i>(when necessary)</i> . . . . .	2	0	0
<i>(If after provisional, 10s. extra.)</i>			
Counterpart . . . . .	2	0	0
<i>(If after provisional, 10s. extra.)</i>			
Parchment, <i>(no stamp duty.)</i> . . . . .	0	10	0
Commissioners' fees on executing bargain and sale . . . . .	3	0	0
Solicitor's fee . . . . .	1	0	0
Paid Commissioner for acknowledging . . . . .	0	10	6
Paid fees of enrolment. <i>This item varies. See supra,</i>			
Filling up and signing memorandum of second public meeting, &c. for registrar, <i>see supra</i> . . . . .	0	3	4
Letters, porters, and postage . . . . .	0	10	0

## Messenger's Bill to the Choice of Assignees.

Attending commissioners to appoint time to open commission . . . . .	0	6	8
Summoning and attending commissioners and room . . . . .	1	1	0

	£	s.	d.
Warrant of seizure, ( <i>no stamp duty.</i> ) . . . . .	0	13	4
Executing warrant of seizure . . . . .	0	13	4
If more than one possession is taken, executing the warrant of seizure in other places, <i>each place</i>	0	13	4
Advertisement in the Gazette . . . . .	1	1	6
Summoning the bankrupt for private meeting . . . . .	0	6	8
<i>The same allowance for every bankrupt, where more than one.</i>			
Gazette, ( <i>the sum actually paid.</i> ) . . . . .			
Summoning and attending commissioners, and paid hall (or for room), first public sitting. . . . .	1	1	0
Ditto choice of assignees . . . . .	1	1	0
Executing provisional assignment . . . . .	0	9	8
Ditto bargain and sale . . . . .	0	9	8
Summoning witnesses to private meeting, . . . . .	0	6	8
Summoning the bankrupt, <i>For each bankrupt</i> . . . . .	0	6	8
Inventory, ( <i>generally £1 : 1s. per day, and ditto for assistant, unless there is any extra trouble</i> )			
Possession, 5s. per day, ( <i>except the first, which is included in the charge of executing the warrant. and if possession is kept in more than one place, 5s. per day is charged for each place</i> )			

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*With respect to costs in bankruptcy subsequently to the choice of assignees, they depend entirely upon the nature of the business necessary for collecting, disposing of, and distributing the estate. All expenses fairly incurred, and also all proper charges for business necessary to a just administration of the estate, will be allowed. The following are items of the most usual occurrence :*

Paid for file for proceedings . . . . .	0	10	0
Solicitor's attendances on business of the bankruptcy, each . . . . .	0	6	8
<i>But where for two hours or more, then 6s. 8d. each hour, and if for a whole day £2 2s. If a clerk only is employed, 15s. or a guinea a day, according to circumstances.</i>			
Writing letters, each . . . . .	0	3	6
Commissioners and solicitors fees on third public sitting . . . . .	4	0	0
<i>On all meetings under the commission the com- missioners are entitled to a fee of 1l. each, and</i>			

# Bills of Costs.

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£ s. d.

*the solicitor also to a fee of 1l., but they cannot adjourn a sitting to another hour of the same day to entitle them to new fees.*

Paid coach hire with bankrupt's books, very numerous 0 3 6

Drawing warrant of commitment of bankrupt for unsatisfactory examination, per fol. . . . 0 1 0

Fee to counsel for settling . . . . 1 3 6

Attending him therewith and thereon . . . 0 6 8

Engrossing same and paper per fol. . . . 0 0 4

Paid commissioners for executing . . . . 3 0 0

Solicitor's fee thereon . . . . 1 0 0

Drawing advertisement for creditors to send in their demand . . . . 0 6 0

*This is seldom necessary, unless the estate is large and creditors numerous.*

Fair copies, each . . . . 0 2 0

Drawing notice to parties not to part with property 0 5 0

Drawing schedule thereto . . . . 0 2 4

Fair copies, each . . . . 0 2 0

Serving the same, for each party served . . 0 3 6

Attending and instructing auctioneer as to an immediate sale of premises or property . . . 0 6 8

Perusing and settling terms and conditions of sale, and attending the assignees thereon . . . 0 13 4

Attending a sale of property . . . . 0 13 4

*(Or more, according to the time occupied ; if a whole day, then £2 2s.)*

Perusing and settling, on behalf of the assignees, drafts of deeds drawn by purchasers, &c., for each skin . . . . 0 5 0

Drawing abstract of title, each brief sheet . . 0 6 8

Fair copy per brief sheet . . . . 0 3 4

Examining deeds with abstracts (*as attendances, supra*)

Perusing title on behalf of the assignees, abstract furnished by other parties, every three brief sheets 0 6 8

Drawing deeds per folio . . . . 0 1 0

Fair copy per folio . . . . 0 0 4

Paid for entering commission, adjudication, assignment, &c. as of record, For entry and endorsement, each original deed or instrument. (*See p. 264*) . 0 2 0

Paid for office copies thereof. *Sum paid* . . . 0 0 0

Attending to get the same entered, each attendance 0 6 8

Paid searching books at the Registrar's Office . 0 1 0

*No fee is paid if the search is made by order of the commissioners, or in office hours. See i. p. 3. ante.*

Attending to search . . . . .	0	6	8
Attending commissioners with proceedings when they signed the bankrupt's certificate . . . . .	0	13	4
The assignees being served with a summons to shew cause why dividend is not declared, attending them thereon . . . . .	0	6	8
Attending with the assignees before the commissioners, when the state of the accounts was explained to them . . . . .	0	13	4
Attending meeting of assignees and arranging accounts preparatory to declaring a dividend . . . . .	0	13	4
<i>(Or more, according to the time employed.)</i>			
Attending messenger fixing time for auditing the accounts and declaring a dividend, and to acquaint the assignees . . . . .	0	13	4
Two copies of advertisement for audit and declaring a dividend . . . . .	0	4	0
Paid inserting ( <i>sum actually paid.</i> ) . . . . .	0	6	0
Attending to get it inserted . . . . .	0	6	8

*This advertisement is generally inserted in the Gazette by the messenger; and the charges for which form an item in his bill, but in bankruptcies, where the creditors are numerous, the solicitor inserts it in the newspapers also.*

	£	s.	d.
Commissioners and solicitor's fees on meeting to audit or declare a dividend, <i>ut supra.</i>			
Drawing advertisement for payment of dividend, and two fair copies . . . . .	0	10	0
Paid inserting ( <i>sum actually paid</i> ) . . . . .	0	6	8
Attending to get it inserted . . . . .	0	6	8
Making out a list of the debts proved under the commission, and calculating the amount of dividend payable on each. <i>See ante, ii. p. 114.</i> For each debt . . . . .	0	1	0
Copy of statement for each assignee, per brief sheet . . . . .	0	3	4
Drawing receipts for dividend, each receipt. . . . .	0	1	0
Attendance on the assignees ( <i>ut supra.</i> )			
If the solicitor pays the dividend, then for every three creditors . . . . .	0	6	8
<i>These items respecting the audit and dividend are the same on every occasion of declaring a dividend.</i>			
Making a list of unclaimed dividends to file at the bankrupt's office, for each debt . . . . .	0	1	0
Attending to file the same . . . . .	0	6	8

	£	s.	d
Paid filing . . . . .	0	2	0
Attending assignees and taking instructions for a meeting of creditors . . . . .	0	6	8
Drawing and two fair copies of advertisement . . . . .	0	10	0
Attending Gazette Office to insert . . . . .	0	6	8
Paid inserting and for the Gazette ( <i>sum actually paid</i> )			
Drawing and fair copy of resolutions to be submitted to the meeting and attending assignees thereon . . . . .	0	13	4
Attending meeting and drawing out memorandum thereof, and of the resolution of the creditors . . . . .	1	0	0
Fair copy of the resolutions for creditors' signatures . . . . .	0	3	4
Filling up memorandum of the meeting to file with registrar . . . . .	0	3	4
Paid for room . . . . .	0	11	0
<i>When there is money at the bankers to a large amount, as £100 or upwards, the assignees should apply to the commissioners for an audit and an order for the investment of the money in exchequer bills, and, if necessary, should call a special meeting for that purpose.</i>			
Commissioners' and solicitor's fees on meeting to order investment of Exchequer bills . . . . .	4	0	0
Same on meeting to order sale of Exchequer bills . . . . .	4	0	0
Attending assignees and taking instructions to lay a case before counsel . . . . .	0	6	8
Drawing the same, per brief sheet . . . . .	0	6	8
Fair copy thereof, per brief sheet . . . . .	0	3	4
Paid counsel therewith . . . . .	2	4	6
Attending him therewith . . . . .	0	6	8
Copy of the opinion for assignees . . . . .	0	2	6
<i>If long, per fol. 4d.</i>			
Attending them thereon . . . . .	0	6	8
Retainer to counsel . . . . .	1	3	6
Attending for that purpose . . . . .	0	6	8
Instructions to counsel to attend meeting of creditors . . . . .	0	6	8
Making copies of examination for him, at per brief sheet . . . . .	0	3	4
Attending him with brief . . . . .	0	6	8
Fee to him to attend meeting . . . . .	3	5	6
Service of summons on witnesses to attend meeting each . . . . .	0	5	0
Paid witnesses necessary expenses, ( <i>see ante, page 170.</i> )			
Commissioners fees for meeting under the commission	3	0	0

Solicitor's fee thereon . . . . .	1	0	0
Attending to appoint consultation . . . . .	0	6	8
To counsel, consultation and fee . . . . .	2	5	6
Attending consultation . . . . .	0	13	4
Drawing petition to the Lord Chancellor, per folio . . . . .	0	2	0
Three copies thereof, to present, for the Lord Chancellor and for counsel, per brief sheet . . . . .	0	3	4
<i>(No charge allowed for observations.)</i>			
Paid answering specially, and messenger to Westminster . . . . .	0	13	6
Taking instructions for affidavit of John Nokes in support of the petition . . . . .	0	6	8
Drawing the affidavit therefrom, per folio . . . . .	0	1	0
Attending John Nokes to be sworn, and reading over affidavit to him, and paid oath . . . . .	0	8	2
Paid for office copy of affidavit ( <i>sum paid</i> ) . . . . .			
Brief copy thereof, per sheet . . . . .	0	3	4
Attending court on hearing the petition . . . . .	0	13	4
<i>(If petition is not heard, then 6s. 8d. only.)</i>			
Paid court fees, porter and door keeper . . . . .	0	10	0
Paid for order, . . . . .			
<i>(Sum paid, nothing allowed for minutes.)</i>			
Drawing bills of costs for taxation, and fair copy thereof, per folio, of ninety words . . . . .	0	0	8
Attending taxation for every twenty-five folios . . . . .	0	6	8
<i>This charge is not allowed when there is a private meeting for the purpose of the taxation, but in that case the solicitor has £1 as usual for attending the meeting.</i>			
Messenger's bill . . . . .	0	0	0
<i>The amount of this bill will be according to the business done by the messenger. All costs respecting any action at law or suit in equity, must be taxed by the proper officer of the Court, where the business was transacted, and his certificate of such transaction must be produced to the Commissioners before the charges will be allowed.</i>			
<i>At the foot of the bill should be written and signed by the commissioners,—“Taxed and allowed by us, this 16th day of June, 1827, at the sum of (stating the sum) see p. 66. ante.</i>			

*Solicitor's Bill of Costs for obtaining Certificate.*

	£	s.	d.
Instructions for certificate . . . . .	0	6	8
Drawing and engrossing same and parchment . . . . .	1	10	0
Attending to get the creditors to sign, each creditor . . . . .	0	6	8
Drawing and engrossing affidavit thereof, each affidavit . . . . .	0	6	8
Oath, 1s. 6d. in London; 2s. 6d. in the Country			
<i>If prepared by solicitor to the commission, then</i>			
Examining proceedings under commission, and extracting list of debts amounting to £20 or upwards and copy . . . . .	0	6	8
<i>(If long according to length.)</i>			
Solicitor's fee . . . . .	1	0	0
<i>If not prepared by the solicitor to the commission, then</i>			
Attending solicitor to the commission for a list of debts . . . . .	0	6	8
Paid him for copy ( <i>sum paid</i> ) . . . . .			
Messengers summoning and attending commissioners to sign certificate and paid for room, (where necessary) . . . . .	1	0	0
Or, if no messenger employed, attending commissioners to appoint a time for signing certificate . . . . .	0	6	8
Paid commissioners . . . . .	3	0	0
Solicitor to the commission . . . . .	1	0	0
Solicitor to the bankrupt, ( <i>if a different solicitor</i> ) . . . . .	1	0	0
Drawing and engrossing affidavit of conformity . . . . .	0	6	8
Oath, 1s. 6d. in London, 2s. 6d. before a master extraordinary in the Country.			
Attending bankrupt reading over affidavit, &c. to get him sworn . . . . .	0	6	8
Drawing advertisement of allowance of certificate . . . . .	0	6	8
Copy thereof . . . . .	0	2	0
Paid for warrant for publication and attending . . . . .	0	9	2
Paid for insertion in the London Gazette . . . . .			
Attending printer . . . . .	0	6	8
Paid for Gazette and Messenger . . . . .			
Paid fees at Bankrupt Office on allowance, if only two affidavits, of seeing the creditors sign, and			



	£	s.	d.
of conformity . . . . .	1	17	0
<i>(If more than two affidavits 2s. for every additional affidavit)</i>			
Solicitor's fee thereon . . . . .	1	0	0
Paid entering the certificate of record, entry, and indorsement . . . . .	0	6	0
Attending to get same entered . . . . .	0	6	8
Porters, &c. . . . .	0	5	0

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\* \* \* *The references to the Forms, &c. in the Second Part of the work, are in italics.*

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THE END.





































